ABORTION LEGISLATION REFORM BILL 2023

Second Reading

Resumed from 30 August.

HON COLIN de GRUSSA (Agricultural — Deputy Leader of the Opposition) [11.28 am]: I rise to make some brief remarks on the Abortion Legislation Reform Bill 2023. At the outset, I want to indicate my broad support for the reforms in the bill. I also want to take the opportunity at the commencement of my contribution to acknowledge all those members in this place and the other place who have shared their very personal stories with us on the issue of abortion. I thank you for your courage and for giving us all a better appreciation for what is certainly a challenging and in some ways divisive topic of discussion.

I think it was Hon Klara Andric who said on Tuesday evening that she believed that no woman makes a decision to have an abortion easily. I wholeheartedly agree with those statements, but as a bloke I can only imagine what it would be like to have to make such a decision. For all sorts of reasons, it would have to be an incredibly difficult decision, I imagine, and very, very challenging. I certainly cannot imagine any scenario in which anyone would easily make that decision. As a bloke who is also a dad of five girls, I am acutely aware of the reality that situations can result in abortion being a consideration. Maybe it could be a consideration for them. If it ever does occur—although I hope it does not—I sincerely hope, more than anything, that if they needed to access those services, they could do so with dignity, respect, care and without being vilified or demonised.

I also want to thank the Minister for Health for providing me with a briefing. I could not attend the official opposition briefing. Nevertheless, Minister Sanderson reached out to me directly and provided a briefing in person, and I am very grateful for that opportunity. I also met with other people with various views on the bill who suggested that amendments might need to be made to it. I thank them for their time and for the information that they have provided. Regardless of my personal views, it is my job as a legislator to try to understand and appreciate all sides of the debate. In that vein, I have listened to and read almost all of the debate thus far in this place and the other place, and I will certainly continue to do that as we move through and scrutinise the bill during the committee stage, which I have no doubt will take some time.

As I said, I broadly support the bill. I am very firmly a pro-choice person—always have been and always will be—but I am also a realist and am of the view that legislation is never perfect. There are plenty of recent examples of legislation when unintended consequences or issues arose that were not contemplated during the time of drafting and that has resulted in problems. I intend to listen to the arguments for the amendments that members can see on the supplementary notice paper and any others that may come forward. I will listen to those arguments from both sides of the debate before making a decision on which way I will vote. It is not often that we, as members of this place, get an opportunity to have a free vote on legislation, but I intend to make sure that I use the power that comes with that as wisely as I can.

With that, I will close my remarks by again thanking those who contributed to the second reading debate with their very personal stories and all those people who have emailed me or contacted my office.

HON KATE DOUST (South Metropolitan) [11.32 am]: I rise to make some comments on the Abortion Legislation Reform Bill 2023. I also want to acknowledge the very respectful debate that has occurred in this chamber and I acknowledge those members who shared their stories with us. Abortion has become one of the most polarising and divisive political matters globally across all political parties, governments and communities. Quite often it is used to define where an individual stands on a whole range of issues, not always necessarily in fact, but in perception. We are defined on whether we are pro-life or pro-choice. I have consistently never shied away from the fact that I am indeed a pro-life supporter. I have been a pro-life supporter since I was a very young child. My knowledge, experience and beliefs have formed my views. That is not to say that when we have had the opportunity in this house I have not taken a different position on some bioethical issues that have come before us, contrary to some of my colleagues who have shared my views on other issues. That is because we in the Labor Party are afforded the capacity to have a conscience vote on life-and-death issues and serious bioethical issues that confront us. I thank the Labor Party for upholding the right of its members to sustain that conscience vote. I attended the recent national ALP conference. That platform has reinforced the party's respect for members holding divergent views on a whole range of issues and for being respectful of people's beliefs, values and religious perceptions. As I said, I have consistently taken that view, and I try to take that view on the continuum of life, not just for the unborn and for those at the end of life. I have also taken a very pro-life approach to how I engage in other matters that impact on people's daily lives, particularly in the area of industrial relations. I think that pro-life members are also very much supportive of pro-choice. Regardless of the issue—be it the beginning of life or the end of life—people need to be given a genuine choice and be supported when coming to their decision. I want to be very clear with members in this chamber that I have never supported the view that people should be jailed or penalised for making a particular decision. I do not think it serves anyone's best interests to punish a woman for having sought an abortion or punishing

a doctor for having provided it. I take a different view, of course, when it has been illegally provided, which raises a range of other potential complications. I just wanted to make it very clear that it does not serve anyone's interests to doubly punish a woman for having made what is perhaps the toughest call that a woman will ever make about a pregnancy.

When I was pregnant for the first time at 29 and single—I was in a relatively new relationship—I remember the pressure that was put on me by my close friends who told me that I should consider having an abortion because it might negatively impact on my career options if I did not. That was never an option for me. I am pleased to be the very proud parent of three children. When I was pregnant with my third child—I suppose I was classed as a geriatric pregnant mother at the age of 35—I recall having to see my GP because over the course of a week I had received three successive and quite insistent phone calls from a health provider wanting me to have an amniocentesis to check the viability of my baby because I was at that particular age. I was becoming quite distressed and spoke to my GP about it. I asked why I was getting that pressure put on me when I was very happy to be pregnant with that child. He said not to respond. I had already said to this caller three times that I would not go through with the test and that I was happy to accept whatever my child presented with. My GP said that unless I was prepared to have a termination based on the outcome of that test, I should not do it because that is where I would line up. If a problem was identified, the pressure would be applied to me to have a termination. Needless to say, I did not have the test. I have a significant unit of a son! Albeit he has some issues, but that is just the way the ball rolls sometimes.

This debate is challenging and I really respect the fact that two of our colleagues in this place have shared their stories. They were both different circumstances but they were extremely tough circumstances. I respect the fact that they have shared their stories. I want to very briefly pick up on an issue that I noted Hon Sandra Carr referenced. I thought it was a very interesting point about the role of men and that perhaps they get away with this a lot more easily. There are some things on abortion that we do not talk about. Perhaps we need to have franker and freer discussions outside of legislation. Do we need to talk about how to up the ante for sex education for males and females, perhaps with more emphasis on males? Do we need to talk about issues around coercion? Do we need to talk more freely about post-abortion grief? I attended a meeting the other night when a councillor talked about those issues. I cannot recall having those types of conversations in this place for a long time. I think maybe we need to deal with those things. Those are some issues that perhaps we will canvass as we work through the Abortion Legislation Reform Bill 2023, but I think there are some very valid conversations to be had. I also believe that if we are going to give women genuine choice, we need to provide them with genuine support to be able to make fully informed decisions.

We are not today debating whether women should have access to abortion; as was pointed out earlier, that debate was held, finalised and resolved in 1998. It was a very torrid debate. I can recall being outside this place in the lead-up to that debate, participating in rallies. I think I had one child in a stroller, one next to the stroller and was carrying another one at the time. I remember the anxiety of some of my colleagues in this place taking part in that debate. I remember the negotiations that were involved, and what we see in the bill before us is perhaps a peeling back of some of the safeguards that were put in place at that time. Members should remember that 25 years ago we were in a significantly different place, not only in terms of the level of medical knowledge of these issues; our technology was also significantly different. I know that based on the six-year period over which I delivered three children. The first time, I went in for an ultrasound at nine weeks and saw a heartbeat; that is basically what was available then. By the time I got to my next child, three years later, the technology and visuals were significantly different, which sent very different messages about the stage of development of that child. By the time I got my third child, it was almost 3D; it was very, very different. In the space of just over three years there was a rapid advance in technology, which aided in education and understanding of the process of development. That in turn was significantly different from when my mother had children; none of that information, advice or technology was available then, and there was probably a bit more mystery in those days about the processes involved in pregnancy.

As I have said, we are not debating whether women can access legal abortion; that is done and dusted. I do not think we will ever go back to that situation. Whether one is pro-choice or pro-life, we can all acknowledge that the world has changed. It is really now about making sure that when women make that decision, they are fully informed about making the right call for themselves. I pick up on comments that have been made in debates in other places—that in the best of all possible worlds, abortion should be legal, safe and rare; it should be a decision that is made in circumstances in which people have been fully informed; and it should be a free decision. However, I know, from a very personal family situation, that that is not always the case.

Hon Nick Goiran made reference to one of my former colleagues in the 1998 debate. Hon Nick Goiran has copped a bit of flack in the media for referencing the late Hon John Kobelke. John was, indeed, an honourable man and a highly regarded individual within the Labor Party. I will repeat part of the quote from Hon John Kobelke that was provided to this house by Hon Nick Goiran on, I think, 29 August this year. It is a quote from Hon John Kobelke in the third reading debate on the original abortion legislation on 7 May 1998. He stated —

> 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 will say that I do not see that as being disrespectful at all; I think it is just a statement of fact at that point in history, when perhaps we were on the verge of great changes in respect of our access to knowledge and information via technology; in respect of changing cultural norms and views around these issues, aided by access to more information; in respect of how people function in society; in respect of the decline of religious influence on individuals; and in respect of the way people wanted to do things for themselves, and having more autonomy. I think John's words were appropriate and still hold true today. If we go back, I think a much more utilitarian approach has been taken to life matters and bioethical issues in our society. We talk about how in some ways life has become a much more commodified item. I know there will be a debate at some point in the future around surrogacy issues, and there will another discussion about the commodification of life at that point, and the utilitarian approach taken to how we deal with those issues. I think John was really reflecting upon the start of that change and upon how we engage with these matters. It really depends on which side of the argument one lines up, I suppose—whether we view it as taking a humanitarian or a utilitarian approach.

As I was saying, we are now at the point at which these things have happened. In this debate we have already resolved the initial question and we are really looking at peeling away some of the initial safeguards. We are making changes to, allegedly, enable access to abortion at a later stage. I will talk a bit more about that later. Most people pride themselves on living in a progressive society, but I want to share something with members. I have probably found this debate more challenging than the voluntary assisted dying debates, stem cell debates, cloning debates and guardianship debates we have had. We have had half a dozen or more debates of varying forms during my time here to which conscience votes were applied. We had the freedom and capacity to tease those bills out, to move amendments and to have an open and frank discussion, regardless of where we lined up. I actually think that is what we should be doing in this place, and we should be doing more of it. But I have found this particular debate quite interesting.

A couple of months ago I attended a pro-life rally here at Parliament one evening. I had not attended one for a number of years, for a variety of reasons. I attended that rally for about 20 minutes. I stood at the back of the rally, watching people and listening to what they had to say. I did not speak; I think I was acknowledged as being there, but then I left. To the side of the rally was another, very vocal and quite aggressive, group of people. I must say, I applaud the people at the pro-life rally because they kept their calm and just continued on. The next day, I received phone calls and emails from people wanting to know whether my attendance at the rally had been approved by the Premier. Had it been condoned? Had I been chastised? Had I been pulled into line for attending that rally? Had I been given permission? I thought that was quite amusing. People wanted me to go on radio to explain myself. A young man phoned my office a number of times and sent quite interesting emails, wanting to know why I was not going to be sacked for having attended that rally. It was also alleged that I had spoken, but I had not. He wanted to know how I justified my position. Had the ALP given me permission to attend? It got to the point that my staff actually contacted state security because they were worried about how aggressive this individual was getting. I thought that was quite interesting.

I respect that we all have different views. During my time I have never tried to impose my personal views on individuals, and I do not think anyone has tried to impose theirs on me; we just respect that we have our own spaces. I understand that this young individual is an active member of Extinction Rebellion, so I thought it was quite interesting that he was having a go at me because of my views on life. We always say it is a woman's choice to decide where she lines up on this issue, so I thought it was very interesting, on the flip side of the coin, that this young man was trying to dictate to me where I should line up—as if it was not acceptable that, as a woman, I should take a pro-life decision. I thought that was quite interesting. A number of other people in my community have had a red-hot go at me, saying that I should not be preselected next time, that I have no right to have this view and that it is a disgraceful to take a pro-life position. I just say to them, respectfully, that I do not challenge their view. People have the right to make the decision to have an abortion. If they choose to do that, that is their business. I am not going to get in the way of them doing that. The law has changed. We are not the same as the United States. I hope that we will never be the same as the US or some South American countries in which this is such a polarising issue. I think our society is a lot more pragmatic and that we accept that when a decision is made, that is it.

Our role as legislators is to make sure that this is the best legislation that meets the test and will deliver upon the expectations of the people who crafted it. I think the challenge for all of us in this house is that even if members support this bill, we need to make sure that it meets those expectations. I have a number of amendments on the supplementary notice paper that are based on the South Australian legislation—the Termination of Pregnancy Act 2021. Four or five amendments were made to the bill in the Assembly of that Parliament that provided some safeguards and clarity for practitioners in that state who are engaged in the abortion process. I will go through some of those in more detail later.

I thank those people in the community who have been very supportive of me, provided their feedback about this bill and asked for safeguards to be put into it. I thank those people who signed the petition. I will clarify some misinformation in the media recently—I think in *The West Australian*—which purported that I had both written and distributed the petition. I did not write that petition. I did not draft it. I had no involvement in the drafting. I did not distribute the petition. I did what virtually every member in this house would do when asked and something that I have done during my 22 years in this house. I do not believe that I have ever refused to table a petition. When I was asked whether I would table that petition, I agreed. I had no difficulty with doing that and I would do it again. If I am going to be pommelled for tabling a petition, I will be very surprised.

I attended a rally, a meeting, in South Perth on Monday night and was amazed at the number of loud, aggressive and abusive people who were protesting outside, to the point that by the time I came out, a number of police cars and police officers were stationed around there. There has been a lot of talk around protecting women who go into abortion clinics. I have no dispute with people being able to get on with their business; I do not support or agree that people should be abused, threatened or intimidated when they go into a clinic to have that process. We have passed laws to deal with that and that is done. However, I find it quite amusing that the flip side of the coin is that that respect does not apply to those of us who take a different view. We were open to abuse, intimidation and threats simply because we went to that meeting. I will be quite clear with members about what I talked about on Monday night. I talked about the parliamentary process. I talked about what would happen with the petition. I talked about what would happen with the debate. I discussed the amendments that I was supporting. That was it. There was nothing contentious. I was doing my business as a member of Parliament. The volume, aggression and lack of respect exhibited by those groups was really interesting to see. It was disappointing. Those people call themselves progressive. I always thought that being progressive meant respecting the diversity of views in society. I do not think that is the case in this day and age; I think it is becoming much narrower and much harder for people to speak their truth. I acknowledge Cheryl Davenport. I know that she is not here today. Cheryl has been a particular support to me in my electorate over the last few years and has always said to me, "Speak your truth; don't be bullied." I thank her for that. That is what I am doing with this bill. That is because people like Cheryl Davenport understand that there is a diversity of views. We have always had a very respectful relationship around our different views, and I thank her for that. That is my little gripe, if members like, about how some of these matters have been managed.

Given the numbers in this house, I know that this bill will proceed through all stages. I doubt very much that the amendments I will propose will be successful, but I intend to move them and have the discussion, because I think that will be a useful discussion. I do not see why our standards should be behind those of other states when we want to afford the best care to women who seek this procedure.

Members have talked about experiences and processes, but we need to break down what the bill seeks to do. I know that that will happen in committee. A significant change in the bill is the shift in the cut-off point from 20 weeks, as agreed in 1998—I understand that was a very contentious point—to 23 weeks. I listened very carefully to our colleague Hon Dr Brian Walker's contribution, which was a very respectful and informed discussion based on his experience. Based on the government's documents, we know that the bulk of abortions in Western Australia happen in the first trimester, usually through the use of medication. That period and the second tranche, up to 16 weeks, form the bulk of the numbers. As advised, only one per cent or less of all abortions occur post-20 weeks. We all know that woman or a couple get to that point after having had a scan and being given some diabolical, life-changing, soul-destroying news about their child. It might very well be a life-threatening disability and that the child might not survive the pregnancy or much after birth. They are put in a dreadful situation of having to make a relatively quick decision about what they are going to do. They can choose to either continue or terminate. In those circumstances, we can respect that people make a decision. I know that. But it is such a small number. I think there needs to be some clarity and safeguards in this legislation so that it is very clear how an abortion after that period can be sought. I worry that we will start to push out the threshold. The difference between having an abortion at nine or 10 weeks and 20 weeks is that, as Hon Dr Brian Walker said, at 20 weeks, it is a baby. In Western Australia, children who are born naturally but unexpectedly early at 22 or 23 weeks and onwards have a very high rate of survival. Western Australian hospitals go all out to do everything they possibly can to ensure the survival of those children. I just think that we need to have a discussion around the nature of when people go in for an abortion at that time and beyond. I will move an amendment that will set out a range of parameters and arrangements that need to be taken into account to deal with that.

The bill seeks to abolish the ministerial panel that provides approval for late-term abortions as the government is seeking to simplify the process. The bill will also change the way in which doctors are described, from having a conscientious objection to being refusing doctors. I think that will put a lot of pressure on doctors. I have no difficulty if a doctor is not in a position of wanting to engage in that space. Of course they should be up-front and tell people. I think the use of the word "refusing" is quite strident and perhaps inappropriate. It may put pressure on them and whether they engage. I have a simple amendment to swap the word "refusing" with the word "unwilling". I will further discuss the reasons when we get to the Committee of the Whole stage.

Mandatory counselling services will be removed. As I have said, I think that when women come to this point, they should be able to make a fully informed decision. A lot of women in our community may not have access to that information. I do not understand why we cannot do what South Australia has done and just supply a standard statement of information, issued by government, about where to access services or information, or what is involved in the process. Quite often when people are dealing with doctors, unless they specifically ask, they do not always tell them what is involved in a process. It is not just with this. We provide information to people for a whole range of other procedures so that they are fully informed. In fact, people sign off that they have been fully informed and understand the risks and complications. For this life-changing experience that some women will go through, they need to have access to information. I do not suggest that they should be compelled to sit down with a psychologist or a form of counsellor, but they should be given information. If they want to seek further advice before they make their decision, I do not understand why there is such an objection to enabling access to information. I will discuss that in more detail when we get to the committee stage.

I have already referred briefly to the increase in the number of weeks that abortion is accessible without reason, I suppose, to 23 weeks. It is allegedly in line with every other state and I understand that is one of the drivers for this change. Tasmania is still different; its limitation is 16 weeks. This is not a simple piece of legislation. To achieve all the changes the government wants, a series of other amendments need to be made. Changes will be made to the Criminal Code. I do not have a great difficulty in that regard because I do not see any benefit to punitive punishment for women who have made this call and have had an abortion. I do not see the value in that. Changes will be made to the Public Health Act. Changes will be made to the Children's Court to remove it as the sole jurisdiction when determining matters around how to define a "mature minor". We need to have a discussion about that because it is an issue has been canvassed quite a bit with me. I know there are some circumstances in which it is difficult for young women—minors—who may not have parental support or they may not be in a position culturally to be able to have a discussion about this issue. The concern is, when the parents are involved, without consultation they will not be there for their child, will not be able to have a say and they will not be able to provide supports. I know this is a bit glib but somebody asked me how we would react if a child under 16 years old went off and got married without parental knowledge. I know it is not legal. What if they did a range of other things under age? This is worthy of a conversation and I hope we go into the definition of a mature minor in more detail. The government has been express about its use of the Gillick approach and I think that is very good. It has talked about what happens with the provision of a guardian or an alternative figure to get that advice and support. I want to see whether we can break that down a little bit more when we get into committee.

There will be a retrospective—keep that in mind—change to the Coroners Act to not have a coronial inquiry on the rare occasion when a child is born alive post abortion. It will not be a reportable death and there will be no record of a live birth. Hon Nick Goiran and others have talked about the live birth situation. There have been questions going back more than 20 years around these situations. Hon Barbara Scott, a former colleague, is sitting in the gallery today. I know she asked questions in that space. My good friend Hon Ed Dermer certainly picked up that debate in the early 2000s and it has been continued by Hon Nick Goiran. It is an issue I know we will have further discussion about. The Australian Medical Association put out correspondence to all members. It made specific comment around coronial inquiries. I understand that it probably serves no purpose to conduct a coronial inquiry and cause the family distress because they have made the decision to have an abortion and, by a rare occurrence, the child is born alive, but I have a concern about when that happens, that birth—that drawing of breath—is not recorded in some way. What capacity does the parent have in that circumstance to ask for a record of that child's birth and death? There needs to be some capacity for the parent to acknowledge it, not in every situation, but in some circumstances. When that has occurred unexpectedly, the parent might still want a record of that child's existence. I think we need to take that into account. I quote the document sent to all members by the AMA —

> The AMA (WA) believes that an investigative pathway, expressly for the purposes of education and improving abortion healthcare services and not to apportion blame, should be established and those supporting the investigations should enjoy legal privilege. The Perinatal and Infant Mortality Committee of Western Australia or similar, may be suited to assume this responsibility.

That is a valid point. It is not to apportion blame. It is a legal process. It is going to continue to be a legal process but, on those occasions, is worthy to note that the event happened and to record that the child was born alive. If appropriate, it will be a memorial to the parent.

Other changes include the provision of medical drugs to make them more available. This probably picks up on commentary I noted in the Assembly about problems with access to abortion in rural and regional areas. Pharmacies would be able to provide this service. The AMA picks up on another thing I thought was quite interesting, which it does not support—the capacity for a woman seeking an abortion to seek advice and support from a doctor outside Western Australia. I am not sure why that circumstance would happen. That flows onto comments made I think by the Minister for Health about the number of women who have had to leave Western Australia to seek a later-term

abortion. I do not know the numbers for that. I suppose my initial question before we get to committee is whether the government can provide a number and can provide information on what caused that to happen. I watched with interest when the Roe v Wade decision happened in the United States last year. I watched the debate and the protest erupt around the world on that outcome. I saw the activity rise in all of our states with protests and commentary about it. I thought it was being used as an opportunity to up the ante on this issue and perhaps tear off the bandaid on a discussion that has been managed in a fairly calm way for an extended period.

I thought perhaps there was misinformation floating around about processes. The American judicial and political systems are managed in significantly different ways from ours. The abortion debate is a more highly contentious issue throughout America. It is probably more polarising and divisive on an individual political basis than it is here. I thought it was interesting that it was being purported that we would face the same challenges. I do not believe we are. I think we are a different society and a different culture. As I said earlier, I think it would be a challenge to take back and remove the arrangements that have been put in place. I do not think there is an appetite on either side of the discussion to do that. I think the appetite, certainly from the pro-life movement, is to ensure that, when decisions are made, people are fully informed, advised, supported and given genuine choices and options if they want them. If they still want to make that call, that is their call. I thought it was interesting to see how the debate was evolving and pushed along by what was happening in our own state.

The feedback I have received from the community in response to that is that it wants to see safeguards put in place. It wants to make sure that the legislation is going to function appropriately and that everyone who engages in the process knows exactly where they stand. That is one of the reasons why I am sure all of us would have received numerous emails from people articulating their concerns and calling for support for the four safeguard amendments that were moved and successful in the South Australian Parliament. Those are the areas that we will be looking to move on here. We are looking at putting in a set of arrangements for the post–23-week abortion process, so it is quite clear about when doctors can take those factors into consideration to agree. We are looking at adding a preventive measure in our act to prevent sex-selection abortion—I have only got five minutes so I will talk about that more when we get into Committee of the Whole House—so it is quite clear that a late-term abortion post–23-week scan cannot be used for that purpose. I will go through some of the statistics around that.

There has already been discussion around live births and the recording and management of that process. I will discuss the provision of information around abortion. We are not seeking detail. We are not seeking names or details or information that would identify someone. It is about a simple amendment asking for anonymous data with very broad bands of information that would be provided by the Chief Health Officer to the minister and a report tabled in Parliament. The reason for that is not only about transparency; it is about informing. It is about providing us with information so we can make good policy decisions about where we go on those issues, about when government needs to afford appropriate dollars to ensure healthcare arrangements, or access to arrangements, for women throughout our state. The other amendment I have already alluded to is around the conscientious objection manner of language that is applied to doctors, to change it from "refusal" to "unwilling".

I have always taken the view, and have been very fortunate in the Labor Party that I am afforded a conscience vote on these matters. I take it very seriously. I respect that others have a different view. I will be doing my job, I hope, in pursuing amendments and questioning the government. There are a number of other issues I would like to canvass. I am quite interested in the idea of providing pain relief to post–23-week babies in utero, when appropriate for an abortion process. I think that is an interesting area that has not been canvassed. I would like a further discussion about informed consent. I am interested in matters that have been canvassed. Hon Martin Aldridge spoke yesterday about unqualified practitioners or unqualified abortion and the penalties. I am curious to find out, given we are 25 years down the track, what the frequency or circumstances are that the government thinks will occur, given the availability and access to services in our state now. Those are some of the issues that we would like to talk about. I think those issues enable a discussion about what services are available.

What are we doing to enhance the provision of maternity services? I acknowledge the government has made an announcement about Bentley Hospital in my electorate and I thank them for that. I think we need to look at issues around counselling and annual reports.

I only have a minute or so to go, but I want to reinforce that I do understand that this is the toughest call, the most difficult call, that woman will make at any point of her life when she is pregnant, either alone or in partnership. What we are talking about here is that later stage when a much hoped-for child might not be able to be born, might not be viable, but we have to look at the flip side and say, "Well, we are making this decision about a viable birth." It is a different question.

I do not make any apologies to anyone about taking my views. I am not going to change my views. I hope to change the bill—I do not know how successful it will be. I think we need to have other conversations around education, coercion and grief counselling. I was reminded recently that when we are looking at things like natural law theory,

it states that it is never permissible to intentionally take the life of another human being and laws that do not accord with natural law are unjust laws. I will be waiting to see how we progress with the amendments before I make my final decision on how I will deal with this bill.

HON TJORN SIBMA (North Metropolitan) [12.16 pm]: First and foremost, Hon Kate Doust has given a brilliant speech. It was pragmatic, measured, reasonable and principled. She expressed every facet that I intend to express, but has done it so much better than I could ever hope to do. That begs the question, why do I get up and talk at all, especially considering I did not originally intend to make a second reading contribution about this Abortion Legislation Reform Bill 2023? As I listened closely to the contributions made by other members, not only in this place but in the other place, and listened attentively to remarks made outside this chamber, I thought it was worthwhile making a contribution to the record.

Firstly, it was a point of reference made by male members of this Parliament. They indicated a degree of wariness about making a contribution at all, or at least an extensive contribution, for understandable reasons. I have come into this place as a legislator, not as a male legislator and not as a legislator of an Anglocentric or northern European background. Nor do I come into this place as a heterosexual legislator or a married legislator. Is this bill the kind of bill that a male can make a useful contribution to? I think the answer to that is, frankly, yes, because this bill speaks to lawmaking in the state of Western Australia.

I am also a defender in the freedom of speakers, and that there should not be separate classes of speakers on a bill like this, or that somebody's contribution to a debate like this should not be attended by qualifications about their gender, political affiliation, religious belief or anything such. This is also a debate that is of a profoundly and irreducibly sensitive, delicate nature. It is not a debate, as we experienced in 2019, upon the creation of a regime for voluntary assisted dying. This is not the 1998 debate that made lawful in this jurisdiction access to abortion services for women. Those signal shifts, adjustments reforms if you like, of the statute book have taken place. This debate is about amending an existing regime. For the record, I voted for voluntary assisted dying in 2019. I was equally commended and criticised for that decision inside and outside Parliament. But it was a decision that I took after due consideration of the issues.

After that speech, I was labelled as a moderate, one of those qualifying terms that we apply to Liberal Party members these days. I do not completely repudiate that description, but I do not entirely endorse it either, because I think it is a shorthand, but also a signal of short-circuited thinking. I think largely that when we talk about issues such as this, the terms that we use and the labels that we apply represent the limits of cognition. I do not necessarily think that is to the advantage of the consideration of issues such as these, issues that are nuanced.

I am adopting my position in respect of this bill from the perspective that I adopted in the voluntary assisted dying debate—that is, not as a social conservative, because I am not this kind of moralising crusader; that is not my game. I am a political conservative. At that time, I described myself then as a Queen and country conservative. I now call myself a King and country conservative. There is a distinction there, not a fine one, but a very serious one. How then should a political conservative approach this bill? I approach it as a legislator. I do not seek to upend a woman's lawful access to abortion services in this state. As I said, that question has been settled. If I had been around for that debate in 1998, I am most certain that I would have supported it. I would have supported it then at the age of 21 were I here. I would have certainly supported it at the age of 46, which I am now, because I have a quarter of a century of life experience, marriage, partnership, and successful and unsuccessful pregnancies. I am not immune to the vicissitudes of life and I do not think any man here is, and certainly none of the female members who have spoken exceptionally bravely, to their absolute credit.

Is it possible at the level of logic to on the one hand accept and endorse women's right to abortion services in Western Australia, yet find reason in this bill to be very, very uncomfortable? In my particular case, the answer is yes. I am uncomfortable for reasons that pertain to the content of the bill, but also for reasons that pertain to what I describe as the rhetoric around the bill.

In coming to this conclusion I have consulted three documents, the three seminal documents that I think any responsible legislator must consult: the second reading speech, the bill itself and the guide to the bill that we call the explanatory memorandum. There were some phrases, and, yes, I agree second reading speeches are not always dry. There are sometimes flourishing of terms and language that extends beyond to some degree the actual content of the bill that nevertheless gives a firm indication of its philosophical or political origins. In the second reading speech there is a particular paragraph that struck me, because the sentence was stark and brief. It talks about the way that Western Australian legislation corresponds with other legislation nationally. It also draws upon contemporary international events.

The paragraph I cite is with regard to "progressive" legislation —

> This work is never done. We have seen what happens when opponents of reproductive justice chip away at the rights that generations of women have fought for. The overturning of Roe v Wade and

> Planned Parenthood v Casey in the US was a major setback for reproductive rights in that country, which refocused global attention on the varying legalities related to abortion access, including local attention on WA's outdated laws. It is now time to further enshrine access to abortion in our state's legislation.

The very worst thing that could happen to Australian polity, particularly in Western Australian political discourse, is to import uncritically, unrefined political discourse from the United States. The reference to Roe v Wade is completely inadmissible in terms of our contemplation on this bill. I understand the thematic issues, but this is black-letter law. What we decide to do in Western Australia should be completely and utterly distinct from the political storm that is occurring on a daily basis in the United States, which I think almost on an hourly basis now debases that republic's democracy. To some degree, politics is always downstream from culture. I just hope that our politics is not downstream through the United States' cultural politics. Unfortunately, I am alerted and alarmed by the direct reference in the second reading speech to that, because I think it is a bad omen. I also point this out, because I was also taken by contributions by the member for Cannington in the other place when he referred to, and I am paraphrasing, how one's perspective on abortion generally should not be a political prerequisite that qualifies or disqualifies someone's suitability for political office. I agree with that statement because I think Parliament is enhanced when every individual parliamentarian has the freedom and exercises their freedom of conscience, absolutely. But is this the only test of a parliamentarian's suitability to be in Parliament, or the only test for their suitability to make a contribution to the Western Australian community? I doubt very much that that is true. That may well be a deeply unfashionable view, but it is a view I hold. Again, I will specify this, we are very narrow cast in our debate. Unfortunately, largely, the narrow casting of that debate has happened as consolidation of media, particularly in this state, has concentrated to almost a single point.

There has to be room for consideration, nuance and differences of opinion. There has to be room in the entire debate for someone like me, who supports access to abortion but thinks that guardrails must apply to that and can take the position that this bill is not meritorious or it attempts too much without justification. That is the position that I adopt. I refuse to be categorised by labels, as much as people will label me. I think the categorisations of pro-choice and pro-life are, frankly speaking, a stupidity. Practised politicians who deal with detailed legislation and with constituents from a diverse variety of backgrounds should act in a way that transcends those labels, for I am both simultaneously. I am an advocate for personal agency and I want to see life flourish. So where does this leave me in the ledger book of good and bad—unreformed, unreconstructed political male or social progressive? Frankly, the electorate will have its view, and that is fine; it should. But I refuse to be effectively categorised by stupid and timid constrained political lexicons.

What, then, is the bill? We cannot come into this chamber and wave it through—I hate to put it so flippantly, but I always fear this to be the case—on the vibe of the thing. Irrespective of a member's personal opinion on abortion, we are not being asked that question. We are being asked to consider a piece of legislation that has consequential flows on to other pieces of legislation, which affects regulation. This is about practicality. We have effectively transcended the debate on the principle. It is now about the detail. I might just concentrate on one or two aspects of the detail of this bill that concern me.

The most alarming aspect for me personally is the extension to the gestational limit. Irrespective of the limits that apply in Western Australia, one also has to consider, if we are doing our due diligence as legislators, fetal development that takes place between the twentieth and twenty-third week. I understand that, largely speaking, the debate on abortion over the last two decades, if not more, has centred on an inalienable secular truth: that an abortion is only, and is ever only, a discussion between the woman concerned and her medical practitioner. That is largely true, but it is not entirely and completely true. There is a developing fetus. That is the issue I want to address, particularly when the Australian Medical Association here has suggested a limit of 22 weeks. I do not think we can set the limit, and we are obliged to. That limit cannot be set solely on the basis of consistency with other Australian jurisdictions or a view—effectively, a value judgement—about how progressive our regime is compared with the regimes of others. Access to this service is absolutely front of mind. I appreciate that, but ease of access and perceptions of difficulty are largely subjective judgements. I do not think we are, with this bill, necessarily considering all the facts that pertain to that particular decision.

One might take a slightly nuanced view of the implications for reportable deaths with the inevitable passage of this bill and the amendment to the Coroners Act, which have been identified by a number of other speakers. There may well be, as the last speaker, Hon Kate Doust, has identified, circumstances in which the mother wants to record the fact that the child was born. We do not know whether that might be the case. There is another argument to say whether or not it is in anybody's interest for a coronial inquiry to be made on that basis. Effectively, I am at a halfway point. I do not think it is necessarily wise to just not record the fact of a live birth, yet I can understand, on the basis of compassion and practicality, that it might not be truly advisable for each and every one of these births to be subject to a coronial investigation. I think someone can hold those views simultaneously. Perhaps the tension will tear itself apart. Nevertheless, that is a contention that I have.

As a practical person, I understand the intent of the amendments around so-called mature minors. I understand them at a theoretical level, but I cannot look at this other than from the perspective of a parent. It is with some reservation that I will encounter that aspect of the bill, and I look forward to a more detailed examination in consideration later.

I have probably failed to express in the way that I think appropriate the underlying motive or motivation for me making this small address. It is that one can hold a principled but complicated view on how they approach this bill. That is the best definition I can ascribe to myself. One need not be anti-abortion to be concerned about this bill. I am deeply concerned about this bill, and concerned to the degree that I cannot offer it my support. But its passage is an absolute inevitability. That is true. Noting that it will be an absolute inevitability, it is almost more incumbent on this chamber to give serious consideration to the range of amendments that appear on the supplementary notice paper. If I were to take those amendments as a group, or even individually, there appears to me to be nothing that would affect the policy intent of the bill if they were accepted.

Effectively, I think that advocates of this bill could largely have it both ways. They could have the bill and its policy intent and they could also consider the amendments. To some degree, the—I will not say pressure—consideration for that might be given to this fact: remember, the principal argument about reforming the current legislative regime is that it is somehow not contemporary with the practice and regimes that apply in other Australian jurisdictions. If that is the case, what is it about the South Australian amendments, which have largely been presented here, that is so retrograde? If we are aiming for best practice from almost a linear perspective of service delivery, why not have best national practice in the guardrails or the safeguards that should also apply?

It is here that I return to the voluntary assisted dying debate of four years ago, I think, now—2019, if I recall correctly.

Hon Nick Goiran: October 2019.

Hon TJORN SIBMA: Thank you, member. My support for that bill was entirely conditional on the fact that suitable safeguards or safeguards that I felt comfortable with—I acknowledge they were not comfortable for everybody—were embedded. For me there were particular no-go zones. Consistent with my advocacy for personal agency, I was determined that voluntary assisted dying should not apply to people who were in cognitive decline because we could never guarantee that their wishes were being fulfilled. Indeed, we would have reason to suspect that the wishes of somebody else might be being exercised. This is my point. We can agree with "progressive social values" but do so from a position of safety and circumspection.

A minority of people are opposed to this bill outright. Just because they are in a minority position does not necessarily mean that their views are invalid. They might be signalling a warning. I think there is generally an acceptance that this bill will pass. It will pass. But there is an opportunity to enter into good faith with the entire community and give serious consideration to these amendments. At the outset—I know it is a little premature to say it—they have my in-principle support. I will wait for the debate. They need to be moved. I am interested in the government's position. I will be listening to that with great attentiveness. This is all can I usefully say.

To be frank, I think inside the chamber the debate has been commendable. I applaud each and every one of you who has spoken. I take particular note of the bravery of the addresses provided by Hon Sandra Carr and Hon Jackie Jarvis. Your contributions have left a mark on me personally. I say that not to embarrass you but to acknowledge you. Two opposition members have spoken who hold different views. Frankly, I respect you all. I treat you as adults. I hope you accept my position and contribution in the good faith in which it has been offered.

HON STEPHEN DAWSON (Mining and Pastoral — Minister for Emergency Services) [12.42 pm]: I rise to make some brief remarks on the Abortion Legislation Reform Bill 2023. I, too, have to say that as a bloke I thought about whether I should make a contribution. I am certainly supportive of the legislation before us and I thought: should I or should I not? I recall vividly the voluntary assisted dying debate in this place and I think I was one of the few members who did not get a chance to give a personal view at the time because, of course, I had a job to do, and that was to get the legislation through on behalf of government. So I want to put my view on the record.

I have a different take from the previous speaker, because on 24 June 2022, the United States Supreme Court ruled that there was no constitutional right to abortion and that upended the landmark Roe v Wade case from 50 years before. That decision shone a light on abortion not only in the US but around the world, including in Australia and Western Australia. That act of the US Supreme Court really was the genesis of the legislation that is before us now because it caused a debate to be had in the community. It reminded us that while we passed in this place what was then landmark legislation 25 years ago, at this time that legislation is outdated and indeed most places in the world have moved beyond that piece of legislation.

Although I was not in Parliament in 1998, I recall vividly the debate that was had in the community at the time and I have had many conversations with Hon Cheryl Davenport since that time about her experiences. It was

a pretty tough debate because people on her side, the Labor Party side, were as vociferous or outspoken against the legislation as others around the chamber were. I acknowledge Hon Cheryl Davenport and thank her for her leadership in this area. I also acknowledge people like Diana Warnock, who was also in the other place at the time. I want to acknowledge the contributions of my brave colleagues in this place who told personal stories during the second reading debate. It could not have been easy and I am grateful you shared those. I acknowledge you and again I thank you.

It was almost a year after the decision was made in the US Supreme Court that legislation was introduced in the other place. During that year, the government undertook public consultation that found, overwhelmingly, the community and medical practitioners supported change. I have had a good read of the *Abortion Legislation Reform: Community Consultation Summary Report*. A total of 17 514 responses were received. The significant changes that exist in this legislation were all overwhelmingly supported by the people who answered that questionnaire.

A number of my colleagues have said that we are not voting on legalising abortion; that decision was made years ago. The US experience, though, shows that all progressive policies are at risk and 50 years later in the US the law went backwards. I do not think we can get complacent. I think we must continue to help those who need help. Although I will never personally experience what some of my colleagues have experienced in making a decision to access abortion care, I know what it is like to fight for equality and to have something taken away. Parliament might have voted one way 25 years ago, but as we have seen elsewhere, those with different views will regroup and will come back to fight again, and I do not think we can get complacent.

It is a matter of fact that some women from Western Australia have needed to fly over east to access safe and legal health care and it is a fact that this debate is more civil because there are more women in this place than the last time the issue was debated. I have been a member of EMILY's List Australia for many years and I have wanted this place to be more representative of the community, our community, and certainly I am proud of the number of women who have been elected to this place in the last two Parliaments. Laws can change. Laws can be changed, but, equally, laws can be taken away and the US experience shows we cannot afford to rest on our laurels.

As someone who fought to be married for many years, only for the High Court to overturn my marriage six days later in only an instant, I am conscious of laws getting changed and the fact that they can be changed. The passage of this legislation is one thing. But if it passes, do not rest on your laurels. Do not be complacent. What is fought for and won can also be taken away.

I think—I think the world is also coming to this conclusion—that there is no room in our society for churches to be in our bedrooms. It is interesting that we have not seen the churches feature in this debate so far, which I think is probably maturity in society.

I think this legislation is long overdue. I think it will make the lives of women safer and also easier. To be clear, I support this legislation because it will reduce the number of health practitioners required to be involved in abortion care from two to one. It will abolish what was a ministerial panel requirement for later term abortions. It will allow health practitioners to conscientiously object but be required to transfer the patient's care. It will remove the requirement for ministerial approve for health practitioners to perform late-term abortions. Again, ministers should not have to make these decisions, and I think this legislation does the right thing. Of course, it will remove from the Criminal Code the last vestiges of what is in there in relation to abortion, which I think is a good thing.

Although the legislation that was passed 25 years ago made changes to the Criminal Code, some issues were still outstanding and it is good that we are dealing with them now. It is a difficult issue but I think that now is the time to make a respectful change.

I acknowledge the contributions made by members in this place. They have been respectful and I congratulate you all. I certainly support this legislation. As I said, I think it is overdue. I also think that the decision in the US was an important decision, and I am happy that it was acknowledged in the second reading reply because, as I said, laws can be changed. Do not be complacent. I urge members to pass this bill.

HON DR SALLY TALBOT (South West) [12.50 pm]: I celebrate the arrival of the Abortion Legislation Reform Bill 2023 in the chamber. It marks a high point in the period of this state Labor government. It has been a while coming. This is one of those happy occasions when public opinion and political will come together. What we will do over the next week or so of sitting is put into effect a series of measures that are widely supported in our community. I think that is a very proud moment for many people in the state. This is something that we have been waiting for for some time now. I intend to support the bill exactly as it has been presented to us. I do not intend to support any of the amendments that I have seen up to this point, and I thought I would take this opportunity to give a very brief overview of why that is the case. Members will notice that my voice has clearly heeded the call for everybody with a voice to get out and campaign to vote yes for the Voice and my voice has deserted me, but I hope it will stay with me for the next little while as I contribute to this debate. I ask members to give me leeway while I cough and sip water.

I am a bit disappointed in a sense that it is now Thursday lunchtime and I was not able to make this speech on Tuesday night, which I thought I might have been able to at one stage, when Cheryl Davenport was in the gallery. She is one of the warriors who campaigned to make changes to the abortion laws in this state when it was a very courageous thing to do. She and Diana Warnock, a former member for Perth in the other place, were the warriors who effected this change in 1998. It is on their shoulders that we stand today. They would be the first to say that they did not do it alone. They had a huge groundswell of support, particularly from women and particularly women who were part of the second-wave feminism movement. I have not heard many members talk about the Women's Electoral Lobby, probably because most members do not remember it. WEL started in the 1970s and reached a culmination point in the late 1990s when we got this legislation through in Western Australia. In those days, it was groundbreaking legislation throughout the whole country. I would like to have paid tribute to Cheryl Davenport while she was physically present, but I am sure that she is following the debate from somewhere. I pay tribute to Cheryl Davenport, Diana Warnock and all the other female warriors who fought for all those years to get Western Australia to the point at which the law was changed in 1998.

Members made this point in different ways, but I will make it in my own way now because this is how I think about it. What was before us then was never a question—not now and not in 1998 or in any of the debates that preceded that change to the law—about whether or not women would have abortions, because women have always aborted pregnancies that they were either not willing or unable to carry. They have always done it. What was the question before us at the end of the last century and what is the question before us now? It is a question of how, and, at the end of the last century it was a question of whether, we could regulate that practice. A number of people would have liked to walk away and say that it is illegal and anyone who does it is committing a crime. In doing that, we condemned a very significant portion of our population to committing a criminal offence. It has been going on since the beginning of time and it will go on until the end of the time. What we did at the end of the last century and what we are proceeding with today is an attempt to regulate the practice. We know that when the practice of abortion is well regulated, it is safe, affordable and accessible. It is worth underlining those three concepts because it is the affordability, safety and accessibility that will disappear if we are not willing to have this debate about regulation. Rich women have always been able to have safe abortions. It was even easier for rich women who lived in cities. The people who could not get safe abortions were poor people, people who lived outside cities and people who simply did not have the resources to find a safe way to do it. They still did it, and they became infected and haemorrhaged, and many of them died. That is what we started to put an end to at the end of last century. We are still engaged in that process now because the core of the bill is about making sure that in 2023 abortion is safe, affordable and accessible.

It is a complex debate. Everyone who has spoken has referred to that. We would like it to be black and white. We are more comfortable with that as human thinkers. Our brains like it when it is a matter of being either on or off. We like digital technology because it is either on or off. We are very comfortable with dealing with issues that are black and white but we are much less comfortable when we get to what people in my former profession of philosophy call the messy middle. That is what we are dealing with—the messy middle. It is not always crystal clear what should be done. I spent many years on and wrote extensively about the various technical and philosophical ways in which people might be able to exist in the messy middle and still make good decisions. I will not go into all that now because a lot of it is quite technical, but I think it is important that when we are dealing with the messy middle, we should think about the values that drive us. Fundamentally, that is the reason that I have a deep and abiding respect for the point of view articulated in this chamber by Hon Kate Doust, because whether or not you agree with her conclusions, you cannot dispute that she is a values-driven politician, and I respect that. I do not need everybody to agree with me. Kate and I are friends and we have also been sparring partners, particularly over life issues. Kate knows that she is not going to change my mind and I know that I will not change hers, but we can still have a robust discussion about these things. We have come to the point at which we have to articulate our values. Hon Kate Doust has done that this morning and I will attempt to do that in my contribution, and it will lead us to different conclusions.

I ask those who are contemplating not supporting the bill as it stands a simple question: how can you fail to be moved by the stories that you have heard about why the current act needs to be changed? Hon Nick Goiran, who is out of the chamber on urgent parliamentary business—he is sort of out of the chamber on urgent parliamentary business; I see that he has just appeared in the public gallery—started his contribution by talking about suffering and offered us a very moving account of how we might offer a hand to people who are suffering. I absolutely understand—it is not even a concession; it is patently obvious—that both sides of the debate can produce stories about suffering, but what I ask members to do is exactly what Hon Tjorn Sibma asked members to do, which is to consider our responsibility not as a pro-lifer or pro-choicer, but what is our responsibility to the community of Western Australia as legislators. Listen to the prayer that we offer up every day we sit in Parliament about doing the right thing by the people of Western Australia. To me, that means, in part, identifying suffering and working out whether there is a way we can relieve some of that suffering. That concept might ring a bell with some members.

Sitting suspended from 1.00 to 2.00 pm

Hon Dr SALLY TALBOT: Before we broke for lunch, I was outlining a way of proceeding with my contribution to the second reading debate on the Abortion Legislation Reform Bill 2023. Respecting that people have different values and deeply respecting those of us who are politically driven by their values, I was going to explain that since I was a young member of the Labor Party, which was about half a century ago or more, it was the words of the Polish political scientist Kolakowski that rang true with me. Members might think, "What an obscure thing to be drawing on, the words of a Polish thinker!" But his words drove the genesis of the Fabian movement in the Labor Party. Members will recognise them when I share them. I associated them with a UK Labour Party politician, Denis Healey, who was, for those who know their political history, one of the "men of the eyebrows"! Kolakowski defined social democracy, or socialism, as —

> … an obstinate will to erode by inches the conditions which produce avoidable suffering …

That became the motto that was attached to the Fabian Society. It has frustrated many people, particularly people on my side of the party—that is, the left of the party—because sometimes we would like to see things go a bit quicker, and the idea of eroding by inches does not go down well when you are a hot-headed, banner-waving activist! Nevertheless, as I have got older, I have begun to see that, indeed, the idea of eroding by inches is probably much more practical and much more sustainable. You have to bring people with you. But it is this idea of avoidable suffering that I focus on. I think it is our duty as legislators to look for avoidable suffering. Some suffering is not avoidable. I heard an interview with the actor Emma Thompson the other day in which she said that we all have our own degree of difficulty. Everyone has problems in their lives; there are griefs that are unavoidable, but as legislators and activists, we look specifically for suffering that is avoidable. That is how I would like to proceed for the next half-hour available to me. I probably will not take up all that time, but I want to work through some of the ideas we are talking about. I particularly want to explain why I feel so strongly that we should not be contemplating the amendments on the supplementary notice paper.

Let us start with a relatively straightforward point, which is about whether we need a separate or supplementary list of considerations that a medical practitioner would have to take into account when authorising or performing an abortion. I understand the reasoning behind that: we want to be very clear that a person is not being coerced into having an abortion. We have heard very moving accounts from both Hon Jackie Jarvis and Hon Sandra Carr about what it is like to actually front up to a practitioner and ask for an abortion. Both those cases make it very clear that it would add to the tragedy, stress and trauma of that situation if the person were being coerced to be there in the first place. I know there is a lot more to it than that, but I do not have much time, so I will tackle the issue of not being coerced and having the capacity to make that decision. I note that some amendments in the bill also provide for people who lack capacity, and I thoroughly support those, but I notice they are not subject to any suggested amendments.

In respect of the idea of coercion, I will draw on my personal experience during the voluntary assisted dying debate. I was involved in that from the beginning of the Joint Select Committee on End of Life Choices days right through to the very end with the implementation of the leadership team, of which I was a member. At some point during those years, I went to my GP. I had not made an appointment—I had a sore leg or something—but during the course of the consultation I said to him, "Can I ask you a question? When I come in here—you have known me for 20 years or so—do you do a capacity assessment on me?" He said, "Yes, of course I do. Every time I see you I check you off against a list of factors." This was not because he had any suspicion that I might have lost capacity; as he said, "That is what a general practitioner does. I need to know, when I'm treating my patient, what their state of mind is, what their state of wellness is and what their capacity to make decisions is." That meant a lot to me. It told me that my gut feeling that this is something that a competent practitioner does was right. It was borne out by some empirical evidence. Of course, that was not the only evidence that the joint select committee heard. During the course of that very, very long and protracted debate, we collected evidence from all sorts of places that that is part of a practitioner's job.

Given that abortion is to come out of the Criminal Code—it is a health procedure—why would we introduce measures for this procedure that are different from measures that apply to any other procedure? A doctor is going to do that assessment anyway, so the idea that we need to have a particular list of considerations that apply only when a medical practitioner is talking to someone about their need to have an abortion is specious. I do not think it has any practical effect. I think if it does anything, it will add to the stress and trauma of the process that the woman and possibly her partner will have to go through. I therefore reject the idea that we need a separate list of considerations.

I turn now to a couple of other aspects of the amendments. When the minister goes to the table during Committee of the Whole, she will address these in as much detail as members require. I shall be very happy to leave that to her, but while listening to some comments made in Hon Kate Doust's contribution, it occurred to me that we might have a simple misunderstanding about what the conscientious objector's provision is. It is my understanding—I am sure

the minister representing the Minister for Health will confirm whether I am right or wrong—that in using the term "refusing practitioner", we are referring to anyone who, when approached when abortion is the subject on the table, says, "I'm sorry; I can't do this." It will not only be people who have a conscientious objection to abortion; it will also be people who are on leave or people who have a schedule that is too busy to fit that procedure in. It is putting the obligation on them to not just say to the woman, "No, I can't do that", because that is what happens now. It does not happen when we have good clinicians, but it does happen now. We know that it happens now. I think that is a really important point. Even if it does not go all the way towards addressing some of those concerns, it at least goes part of the way. We are not singling out conscientious objectors.

The reportable deaths issue is worth teasing out a lot more in the committee stage. My understanding is that the recording of births and deaths, given that a live birth is a live birth, is solely the province of the Births, Deaths and Marriages Registration Act, and that act is not being amended by this legislation. I cannot see why a person who loses a baby, either voluntarily or involuntarily, in the sense that there is something terribly wrong with the fetus, could not, if they wished, get a death certificate or go through whatever they wished to do by way of ceremony and acknowledgement of the fact that this had happened to them. They are two things that we will obviously talk about a lot more in committee.

The sex selection amendment puzzles me. I have had some quite long conversations with people, including Professor Joanna Howe, whose background paper includes a consideration of sex selection. I am genuinely baffled by it in the sense that I cannot see that this amendment would have the effect of preventing the cultural preference some communities have for a boy over a girl. Where I end up with this part of the discussion is to say to people who have very strong feelings about this that I am going to vote against that amendment not because I approve of sex selection—I deeply disapprove of it—but because I think it would be entirely extraneous to this bill. If I decided to make that my cause for the next 10 years, I would not start by putting a specific clause in this bill. I would start by improving education for girls in migrant communities. I would start with anything that would improve the status of women, educate people and provide opportunities for girls. We need to remove some of the stigma about not having a boy in an inheritance sense. That is where I would put my energy. I am not going to support the amendment.

Likewise, the data collection amendments puzzle me slightly. I do not know why people are putting their energy into this. This bill comprehensively deals with data collection. We need only read page 12 of the version of the second reading speech that members can collect at the back of the chamber or page 14 of the explanatory memorandum, which has a long section about the data collection provisions in this bill. We do not need exceptional provisions for collecting data about abortions. If a researcher requires technical data to progress their research, they can go through an ethics committee. All institutions have them now. They are well-established, efficient bodies that work out how people can get data that is not generally available to the public. I have not heard a single example of people not being able to obtain data because of some deficiency that would be rectified by the kind of amendment we are being invited to consider. Again, I see no reason whatsoever to have any exceptional data-collection provisions.

Some advocates for what we are calling the pro-life position—not all of them—refer to failed abortions. I am in absolute lock step with the minister and many other contributors to this debate in completely rejecting the notion of a failed abortion in this context. The minister has been clear about this notion of a so-called failed abortion—as clear as any minister I have ever seen be clear about anything. With the greatest respect to Hon Nick Goiran, if I were not such a nice person, I would say that he egregiously misquoted the minister. Everything I have seen or heard from the minister has made it crystal clear that she has said only one thing about this issue—that is, there is no such thing as a baby born alive after a failed abortion. There is no such thing as a failed post 20-week abortion. That is her language. That has been the case from day one until today. If the member had found an example of her not saying that, he could have questioned, in a more generous spirit, whether the minister had perhaps misspoken. I am not going to pass an opinion on that. All I can say is that every single word I have heard or read on this issue from the minister and the medical experts and practitioners that we have spoken to has been very clear that there is no such thing as a failed post 20-week abortion.

We clearly have a figure for babies who are born alive. Again, I would have thought that there was enough material on the record. It does not make easy reading. When people find out that their child's life is not going to be sustainable if the child is carried to full term, they will be offered a procedure that will involve them having a stillbirth. Every woman in that position is offered the opportunity to have a stillbirth. Most people who go through that terrible situation choose to have a stillbirth. Some will not for cultural or religious reasons. They want to provide comfort and love at the moment when that life expires. Do not ask me what I would choose in that situation because I am not sure. This is very much the messy middle that we are talking about. We should not make a moral judgement about this. I think it is the most enormously courageous thing to do to have an abortion at 23 weeks and then hold what frequently would have been a beloved child until it is no longer breathing. I think that would be an extraordinarily courageous thing to do. When I say that I am not sure what I would choose, what I am really saying is that I am not sure whether I would be brave enough to do that, but some people are and they must be allowed to do that.

To introduce another set of procedures at that stage would be to totally disrespect the courage that is shown by those people. If we introduced any notion of post-abortion care, we would get in the way of that. If members want to erode the conditions that reduce avoidable suffering, they ought not support this amendment. This has been outlined in graphic detail. Hon Dr Brian Walker was the last person whom I heard say it. He described what happens in words of one syllable. He is talking from experience. He is not doing what I have to do. He is not saying, "I am not sure how I would react in that situation." He is telling us what happens. I say that it is not our place to get in the way.

I know there are people—I will call them warriors—on the other side of this debate. One of them was quoted by Hon Nick Goiran. Let us be frank here: you get to a point when you have to choose sides, and I have chosen my side. Hon Nick Goiran has chosen his side, and he wants to line up with Melinda Tankard Reist. That is fine. He is perfectly at liberty to do that. However, there is a whole other debate here that we could be having that would take us hours and hours, if not days and weeks, about what a woman goes through in procuring an abortion and how that woman is to be viewed. I cannot align myself with that way of thinking. Basically, it is a form of conservative feminism, which is not the feminism that has motivated me for the past several decades. It is a form of feminism that is inclined to see women as victims; is inclined to see women as coercible and helpless and needing protection. That is not my form of feminism. My form of feminism looks at women, not as victims, but as free moral agents. Members have heard two of them in this debate—Hon Sandra Carr and Hon Jackie Jarvis. When they gave their accounts, they were not the accounts of victims. My goodness, if anybody has the right to claim victim status, it is people who have been through that. However, they were not speaking to this place as victims; they were speaking as free moral agents and competent decision-makers, and I think we ought to respect that.

For me, I chose my camp, and in my camp are people like Eva Cox, who has written extensively on this matter, and Leslie Cannold, who speaks to me directly because she is a fellow philosopher. There are plenty of opinions on the other side. If you want to line up with the Nick Goiran–Melinda Tankard Reist–Brian Harradine camp, then you do that, but just know what you are arguing at the base.

That brings me to the final point I want to talk about, which is the issue of counselling. It is not uncontroversial to remove the mandated counselling. It is an issue that members will find addressed in a report in which I had some hand in writing—the *Ministerial expert panel on assisted reproductive technology and surrogacy: Final report*, to which the government has already provided its response. I was a member of the team that worked on that report that recommended a revised form of legislation. We looked a lot at the mandatory counselling that is currently required for surrogacy and human reproductive technology and we recommended that it be abolished. I have a very personal view on this and I respect Hon Donna Faragher who spoke absolutely from the heart about why she thinks it is necessary. But I also speak from the heart on this and I draw from personal experience.

As I think every person in this place knows, because it is on the public record, I identify with the GLBTI community. I can tell members that there have been several moments in my life when I have been told by medical professionals that I might like to seek counselling because, after all, I have lived an unconventional lifestyle and I have made some unconventional choices, and that, presumably, has put stress on me, and before I make the next step, would it not be good if I had some counselling? I say, "No, thank you." I do identify as a GLBTI community member but I do not need counselling about my sexuality, thank you very much. I agree that there are some people who might, and that counselling needs to be available to them, and it is available to them. I am sure we will hear the Leader of the House in the committee stage go into considerable detail about the counselling that is available to people.

Again I come back to the competence of the practitioner. The practitioner is the person who will decide whether somebody is going to benefit from counselling or not. I made it very clear to the practitioners I was talking to what my view was. I can tell members that things have changed; things have actually got better. I can talk now in forums about some of the choices I made that have been associated with my sexuality and my lifestyle choices. I would say that I can talk now everywhere in my electorate about that. I think that some other members of Parliament who identify as GLBTI would agree with me that there are not "no go" areas anymore. Thirty or 40 years ago, when I was being told that maybe I would like to have some counselling, I kept quite quiet about it. I sent people coded signals. We used to talk about "a friend of Dorothy" for goodness sake. I bet half the members in here do not even know what a friend of Dorothy is! Things change, and in 2023 we do not need to mandate the provision of information about counselling for people who are preparing to have an abortion.

I think that just about brings me to the end of the comments I wanted to make. If, like me, members are motivated by the desire to prevent avoidable suffering, they must seek a remedy. To me, the suffering that has been identified will be remedied by this bill. When we talk about the suffering that has been identified, I know that there is extensive material that talks about the trauma that is associated with various parts of the abortion procedure. A piece of evidence was presented to us in the other place about a woman who had to travel interstate. That is what somebody today has to do. The science has moved very fast. If we compare the science we have today with the stories Hon Jackie Jarvis and Hon Sandra Carr shared with us the other day, in 2023 neither of them would have had to go through what they

went through. Presumably—I am not a medical doctor—both of them would have had the option to take a prescription to the chemist and go home and take a pill. Nobody would have known. That was not the case some years ago. However, it is the case in 2023 that if a pregnant woman has the amniocentesis or whatever other exploratory test she has at 20 weeks, which is the first time she can have it, and the results take some time to come through, she is going to be well and truly beyond the measures of the law to procure the treatment she needs in Western Australia. I do not want to get into a bidding war about whose suffering is worse, but the story that was told by the member for Nedlands, Katrina Stratton, moved me beyond words. She told Pippa's story. It was a story about a man and a woman who already had children. They had a planned pregnancy and the diagnostic tests they had at 20 weeks came back inconclusive. She tells the story in a very articulate way, and I recommend that members read it. I want to share with members the account of the mother when she finally got back to Western Australia after having had to travel interstate to have the late-term abortion. She says this —

> My husband never met our daughter. He never held her. He never saw how she looked like our second. A sweet, beautiful wee thing. We didn't collect her ashes. We didn't know we could. I should have been at King Edward Memorial Hospital, with my husband, and then home to my own bed. Instead after two days of blur, we flew home to our children to explain that our baby had died. And my life will never be the same.

That, members, is what we consign people to unless we change this legislation. The change is something we have to make.

I will finish my remarks by endorsing the sentiments the Minister for Health closed the debate with in the other place. This comes from our hearts —

> When women are elected into these positions, —

She is talking about as members of Parliament —

> it meaningfully improves the lives of women. The Cook government is steadfast in its belief that the right to safety, privacy, dignity and respect for women accessing health care should be protected …

Point of Order

Hon NICK GOIRAN: I rise under standing order 38, which says —

> A Member who has spoken to a question may speak again to explain some material part of the Member's speech which has been misquoted or misunderstood, but shall not introduce any new or debatable matter.

I will briefly indicate that at this time, in response to remarks made by Hon Dr Sally Talbot.

The ACTING PRESIDENT (Hon Sandra Carr): I have sought advice and you may proceed, noting the time limit of 10 minutes.

Hon NICK GOIRAN: Thank you, Acting President. I appreciate that it is an unusual procedure and I indicate to members, including the Leader of the House, I have no intention to be long in exercising for the first time ever—for me anyway—standing order 38.

I wish to respond briefly because the standing order indicates that a member can do this if they have been misquoted or misunderstood. Hon Dr Sally Talbot, who continues to have my respect as a longstanding member of this place, has forcefully and politely suggested that I have misquoted the minister, Hon Amber-Jade Sanderson. It is worth spending a few moments to correct the record because I did devote a large proportion of my contribution on the second reading speech to extensively unpick the quoted statement by the minister that, "There is no such thing as babies born alive after an abortion." Hon Dr Sally Talbot has sought to correct the record and suggest that the actual quote is that, "There is no such thing as babies born alive after a failed abortion."

I have reviewed my notes and am absolutely certain that the quote, as reported by *The West Australian* on 4 August, 2023, and as reported by *The West Australian* the following day on Saturday 5 August, 2023, is, "There is no such thing as babies born alive after an abortion." I hope that will clarify to the extent that the member misunderstood my speech. If there is umbrage taken with the quotes, please take it up with *The West*, which printed the quote on those two days. I have no reason to suggest that *The West Australian* got that wrong, not once but twice. If the minister or the honourable member have an issue with that, then I encourage them to avail themselves of the remedies that are available to them in seeking a correction from *The West Australian*. Until such time as that happens, I will continue to say that the reported comment from the Minister for Health, which is wrong, is that, "There is no such thing as babies born alive after an abortion." I have taken further time on this point but it would have been intolerable for me to allow that comment to stand unchallenged.

Debate Resumed

HON BEN DAWKINS (South West) [2.35 pm]: I will be quick on this. Hon Nick Goiran has made a point that is the real substance of what I wanted to say today. I apologise if I get some detail wrong because it is not, as one would expect, an area or particular strength of mine, but I will try to be as accurate as I can. Babies are born after abortions. I think those are the right words. Like most members, I have spent time with Joanna Moore from South Australia —

Hon Nick Goiran: Howe.

Hon BEN DAWKINS: Howe. Sorry. I was convinced by the statistics and cases that Joanna provided. I think that is the nub of the question, Deputy Speaker —

Hon Pierre Yang: Acting President.

Hon BEN DAWKINS: Acting President. With the current act, I feel as though Mother Nature is really giving us some guidance here. Prior to, I think, 21 weeks, aborted babies do not have to pass through the birth canal. That is my understanding. I would suggest that the current 20 weeks as provided for in the current act is sufficient. I see nothing in the government briefings that I have been provided with that is compelling enough to say there is any purpose for changing the allowable period beyond 20 weeks. I have seen nothing in that. In fact, I am probably convinced somewhat by Hon Kate Doust, who referred to technology and how that plays a role in establishing deformities and other reasons that may require an abortion—or may present a case for an abortion—can be discovered earlier. I feel technology is assisting us here. If I were running this place, I would be of the mind to keep it at 20 weeks and I will be consulting with others in the chamber on how to make that an amendment to this bill, if that is possible.

I do not think it was helpful that Hon Stephen Dawson talked about Roe v Wade and that kind of thing. I did hear Hon Kate Doust say that we are not talking about whether we are legalising abortion or not. It is legal. There is no benefit to looking at the American situation, because it is simply not the case here. All we are doing here is changing the number of weeks and some other things. As I said, Mother Nature seems to say do not. Obviously, there are still cases for later term abortions, but, in the first instance, do not create a situation in which abortions happen after 20 weeks.

The case for this bill falls away, in my way of thinking, in a fundamental way. Consistent with my short time in this chamber, I feel that in some instances the government seems to come up with changes for unknown reasons and then creates a set of statements to justify the change, which do not actually justify the change. That is what we went into here, talking about Roe v Wade and other things like that. To a large degree, the whole bill falls away at 20 weeks' gestation.

Outlawing any form of gender selection is something that needs to be done. Keeping the gestation period at 20 weeks was Joanna Howe's fourth substantial amendment to the South Australian legislation, and for various reasons, she did not proceed with that. Her three substantial amendments went through. I know she is only one person, but if she had way, her fourth amendment was to keep it at 20 weeks. She did not pursue that for various reasons. If we look at her methodology and research, there are grounds for keeping it at 20 weeks in Western Australia.

Hon Dr Sally Talbot, we are not really talking about camps. I am certainly not going into a camp and aligning myself with any kind of particular ideology. I am trying to look at the science and evidence. It is not my area of expertise, but I did discuss it with my daughter last night, and she mentioned that none of her mates have got $500 for an abortion. I am not sure if that is the cost, but cost is not an issue explicitly in this bill. If there was something in this bill related to my daughter's anecdotal point about cost, then, yes, I could look at it, but we are not talking about cost; we are talking about other things on this bill.

I do not think it is fair to say Hon Nick Goiran is heading in a particular ideological way or comparing him with activists in the pro-life camp or anything like that. That may be the way the government wants to paint Hon Nick Goiran's ideas on this bill, but I do not see that at all. Hon Nick Goiran is looking at the evidence and applying his legal skills to what he sees as the ideal drafting of the bill. It is not an ideological crusade and it is not helpful to look at it in that way. As a general rule, I do not think people are looking to jump into camps. People are given a conscience vote, turning their own mind to the evidence.

I suggest that the amendments on the supplementary notice paper are logical, but the fact that other jurisdictions have gone to 23 weeks—so what? I am trying to look at the evidence here, and falling in line with other jurisdictions is not the basis for reform. That is just following the leader. We heard from Hon Dr Sally Talbot and Hon Nick Goiran—I am trying to get the terminology right because Hon Nick Goiran has been through it—about babies born after an abortion, that only happens after 21 weeks. Mother Nature is telling us, "Let us do everything in this space before 20 weeks", which is what we have at the moment. Yes, this is an important and sensitive issue, but is it an important bill? No, I do not think it is. These are changes sought by the government, but not for any particular reason, and not in the sense that it is made out in a scientific or logical way. It is something about falling into line with other

jurisdictions. That does not make this an important bill, otherwise we would be treating this bill like the WA Industrial Relations Commission, which is the only remaining one of its kind in Australia because we did not refer our powers. We do not just fall in line with other jurisdictions. That has never been the basis for reform.

If the case for this magical move to 23 weeks had been made out in the government briefings that I had, then I would stand corrected, but it has not. The briefings, even the government briefings and briefings from lobbyists like Joanna Howe that I have received, were actually quite horrific and sickening. I am well aware that Hon Dr Sally Talbot says that there is suffering for people who cannot access an abortion, but that is why abortion is legal in this country. It is legal, currently, after 20 weeks. That is why have this system, because we respect the choices of women.

As I said, I had a conversation with my daughter yesterday and she was not particularly passionate about anything. She mentioned the cost, but because she knows abortion is legal in this country she did not have any particular concerns. My daughter is only one person, but she did not see a basis for reforms and was not passionate about increasing the allowable gestation period for abortions. I hear some murmurs when I say this, but I do not think the bill as it is drafted is a particularly important reform, because the principal thrust of the bill is increasing this allowable gestation period. I was going to talk about relieving suffering by making abortion allowable, legal, and accessible in this country, and accessible even post 20 weeks, with the medical practitioner's opinion, plus two people from the panel. I think getting rid of the panel is probably a good thing in this bill. I am not saying there are no good things, but that is a minor and probably quite valuable reform.

However, the suffering that we are trying to address in allowing women to access an abortion—for all kinds of reasons—is addressed to a large extent under the current act, because abortion is already accessible and legal. In the briefings, even the government briefings, we talked about the drafting of the current bill and about babies born after an abortion. That was a very challenging thing to listen to. That is a particular suffering that I have heard about, and I do not think it is disputed, based on the cases that have been put to me about babies in the eastern states being born after an abortion and taking their breath and being left to die. That was the most confronting and upsetting thing for me to hear about during the briefing process. It was part of the government briefing and part of the lobbyists' briefing, you might say. If we want to talk about addressing hurt and suffering, I understand that babies took their last breaths, in one instance, in a kidney dish and, in another instance, in, effectively, a rubbish bin. That is a form of suffering under any definition of a human being. Those things occur only beyond the 20-week period. If we want to talk about removing suffering, it should be kept as it is at 20 weeks to avoid that kind of suffering. It is easy to say, but it is also difficult to say, because it is a sensitive area. I understand that babies aborted prior to 20 weeks cannot effectively pass through the birth canal and be left to die. The abortion process prior to 20 weeks is, by its nature, a more humane process and has a humane result. I do not know how to effect an amendment that will change the entire basis for the bill and remove the change from 20 weeks to 23 weeks. I do not know how to do that, but I will seek advice on it.

In terms of changing the requirement to get one doctor and two members of the panel to agree to a late-term abortion, I think it is good to get rid of the panel and just require a second doctor's opinion. That will probably be a positive from the bill.

As a lawyer, the father of a daughter and a proponent of more rights for underage people, I like the idea of—I still cannot get that word that the experts have been telling me—identifying the capacity of people under 16 years of age. I cannot remember the name of the principle, but I like the idea of empowering people.

Hon Darren West: Gillick.

Hon BEN DAWKINS: Yes, the Gillick principle. They are not required necessarily to have their parents make the decision if they can demonstrate that they are a mature 15-year-old and therefore can make the decision themselves. I like the idea of extending those individual liberties to the younger person.

When I speak about the bill and say that the legislation is fine, it will please certain people who always want to sensationalise any statement and say, "Oh, well; Mr Dawkins is not interested in women's rights." Obviously, that is just a cheap shot and a way of progressing a political agenda. I am interested in women's rights. We have legal abortion in this country and it does not need to change, particularly in relation to the gestation period of 20 weeks.

HON SUE ELLERY (South Metropolitan — Leader of the House) [2.54 pm] — in reply: I rise now to conclude the second reading debate on the Abortion Legislation Reform Bill 2023 and, in doing that, I want to thank everybody who has made a contribution to the debate, which, I was going to say, had thus far been conducted in a civil, respectful and mostly compassionate manner. I cannot say that about the last contribution. I cannot stress enough how insensitive those words were and the delivery of them, given, apart from anything else, what two members stood and said. I cannot get over the insensitivity. Of course, Hon Ben Dawkins is entitled to his point of view and is entitled to exercise his vote however he chooses, but that was appalling and unnecessary and, I think I could probably say on behalf of everybody else in the chamber, completely unacceptable. Now I am going to move on, because it is not worth getting myself distracted by that.

This is what I want to do. At the start, I want to note the members who canvassed the reasons why they are voting the way they are voting. I want to acknowledge and thank in particular Hon Sandra Carr and Hon Jackie Jarvis, who shared their stories—in the case of Hon Sandra Carr, a decision that abortion was necessary in the context of an abusive relationship; and, in the case of Hon Jackie Jarvis, a decision made as a consequence of a sexual assault. They did not have to share, and it may well be as a consequence of that last contribution that they wish they had not, but I am really grateful that they did, because their personal circumstances are the personal circumstances of so many. Statistically, in a room with so many women and in a building with so many women MPs and staff, there are others we see and talk to every day who have used abortion care. Those two women choosing to speak—there was no pressure on them to do that and there is no pressure on anyone else to do that—reminds us, if we ever need to be reminded, that the laws we consider are not abstract. For the myriad reasons described quite neatly by Hon Sandra Carr and others, including that bodies do not always respond to contraception, all the way through to the way that rare late-term abortions were described so eloquently, I thought, by Hon Donna Faragher when she used the words "difficult and challenging news about a baby that is dearly wanted" or receiving incredibly difficult and challenging news about a mother, thousands of women are making the decision to terminate a pregnancy. In 2023, it is right and so important to remove the restrictions that make it harder to do that.

In the rest of my comments, I am going to move between specific issues raised by members and themes, because many members canvassed a range of themes. I will go to the question of autonomy. Hon Lorna Harper highlighted the importance of autonomy—that every woman should have the right to autonomy over her own body, self-determination over her reproductive rights and the right to decide what medical service she does or does not receive. That was reiterated by a number of members. Making abortion illegal or restrictive has never stopped it, nor reduced it. That comment was made by a number of members, including Hon Dr Sally Talbot. Indeed, although I have not found myself in a position to need to make a decision about an abortion, my grandmother did. She had an abortion in India in the late 1940s. Being a lifelong devout Catholic, she found herself having to make that decision. I can say it today because she is no longer with us, and I can definitely say it today because my mother who was an even more devout Catholic is no longer with us and would have shot me for sharing that information! But it reiterates the point for those who think that removing restrictions is unnecessary. Abortions have always been sought and undertaken—always. From the beginning of time, there have been unwanted pregnancies. Is it not our responsibility to ensure that our laws are up to date and take into account how easy or hard we make it for people and the difficulty in delivering healthcare services outside a metropolitan area? It is appropriate that we continuously make sure that our laws are up to date.

Hon Ayor Makur Chuot highlighted that cultural and religious beliefs and practice strongly and widely impact on her constituents and their views about abortion. The intention is that women from culturally and linguistically diverse and migrant communities, and from regional, remote and rural areas, within all of WA, will be supported regardless of the choices they make. They will be supported to make their choice.

Hon Dr Brian Walker also noted that during his time as a medical practitioner in regional, remote and rural communities, patients faced very real struggles to access clinicians to access abortion services. This bill will help improve access to abortion care for those in our regional, remote and rural communities. The bill will remove the requirement under the Health (Miscellaneous Provisions) Act for earlier abortions to be considered by two medical practitioners. It provides that the authorisation of one medical practitioner will be required to perform an abortion on a person who is not more than 23 weeks pregnant. That change alone will significantly address some of the barriers to access faced by people living in regional, rural and remote communities. If anyone took anything from that last contribution seriously, it would be the proposition that that alone is an important reason to support this bill. That alone is an important reason to support this bill and that alone is a reason that this is an important piece of legislation.

One of the other themes raised by people was about prescribing practitioners and registered health practitioners. The legislative ability for registered health practitioners, such as nurse practitioners and endorsed midwives, to prescribe abortion medication will also go some way towards improving access. Hon Martin Aldridge queried whether these classes of practitioners are able to determine whether patients have decision-making capacity. The Therapeutic Goods Administration determined that medical abortions can be safely provided by registered health practitioners. The bill before us today will simply allow Western Australian practitioners to practise to the full scope of their role. I can confirm that endorsed midwives and nurse practitioners practise autonomously in the same way that medical practitioners do, and are competent in assessing a patient's capacity regardless of age. They are highly skilled professionals who undergo additional training to allow them to prescribe a range of medications and order diagnostic tests. Many sexual and reproductive health services are already nurse-led, particularly in regional WA. Practitioners assess patients every day through the ordinary practice of their work, including minors who may seek information on, or health care related to, their sexual and reproductive wellbeing. That takes us to the theme of minors, which several members touched on.

The bill seeks to clarify the pathways for young people to access abortion care services. Although most young people confide in a trusted parent or guardian about their healthcare needs, it is not always safe. It is not always possible. The bill will provide a pathway for those who need it. It will do this by recognising the well-established concept of Gillick competence, often called the "mature minor" principle. The WA health system and the Australian health system already recognises that some children have the ability to consent to medical procedures and treatments; that is, a Gillick competent child has sufficient understanding and intelligence to consent to their own medical treatment. The bill will simply align decision-making relating to abortion to general medical care.

I refer to the issue of removing the counselling requirement. I think Hon Jackie Jarvis probably summed it up most neatly for most of us when she told her story and she said, according to the proof *Hansard* —

> … my decision was clear and I did not need counselling. I find the idea that we should have mandatory counselling insulting to women …

The results of the public consultation held last year indicated strong support from the community and the health sector for the removal of mandatory counselling provisions. Mandating participation in counselling adds another layer in the process of making a decision about healthcare needs, and the bill seeks to change this. A number of members stated that when providing health services, we should place trust in the medical profession, rather than having prescriptive legislation. The bill is a good example of this and more consistently aligns with how other health services are provided in this state and in other jurisdictions.

Hon Donna Faragher queried whether the bill should at least mandate that information on counselling be provided to every patient seeking an abortion. I understand the member's motivation for that, for those patients who may benefit from counselling services. The decision to have an abortion is not always complex. Although counselling might be a useful support for some, others will see it as unnecessary and invasive. Mandating that practitioners provide all women with information on counselling undermines that person's autonomy and also the ability of practitioners to properly assess each individual case. I agree, however, that information on counselling should be easy to access for both members of the public and health practitioners who wish to refer or support a patient. Under our government, the Women and Newborn Health Service has developed material that is available online for the very first time. Our government is committed to ensuring that counselling services are available to those who want to access them. We already fund non-directive pregnancy options counselling that can be accessed free of charge. We are absolutely committed to continuing this service. Regional Western Australians in all locations can access counselling via telehealth. In-person appointments are also offered in major regional centres, including Bunbury, Kalgoorlie and Geraldton.

I want to go to the issue of late-term abortions. Many members noted that this bill reflects a change to the current gestational age limit for additional medical oversight for abortion of a fetus from 20 to 23 weeks. Comprehensive anatomy ultrasounds occur around the 20-week mark. Being able to provide general abortion access up to 23 weeks' gestation will better align Western Australia with other jurisdictions to ensure fewer patients travel interstate for medical care. This change should provide WA families time to consider all the options available to them and to ensure greater continuity of care in often very difficult circumstances.

One of the matters Hon Nick Goiran raised was that the Australian Medical Association of WA submitted a preference for a 22-week gestational limit. That is correct. But it was not the position of the majority of medical peak bodies. The Royal Australian and New Zealand College of Obstetricians and Gynaecologists, which represents the medical practitioners most commonly involved in later-term abortions, recommended 23 weeks. I attended the two clinical round tables with the Minister for Health. The contributions and evidence from the clinicians at those two round tables, including from the Australian Medical Association, was compelling. This bill has been developed in close consultation with WA clinicians and the relevant peak bodies. A 23-week gestational limit was deemed to best reflect current clinical practice and be most appropriate for the WA context. We need to understand what we mean by the WA context. It is, in part, our geography, which works against those who have to make a decision and seek advice in a very short time. When we talk about the Western Australian context, we need to think about our geography.

Hon Martin Aldridge noted the removal of the ministerial panel for late-term abortions and queried why information held by the panel was not available. The Department of Health holds information on the number of induced abortions performed in WA through the reporting mechanism established under the Health (Miscellaneous Provisions) Act. When the medical practitioners on the panel do not approve an abortion to proceed, it is noted on the individual person's medical record but not on a database. There is no statutory requirement to collect information about the decisions of the panel other than whether an abortion was performed. For this reason, information of this nature cannot be provided to third parties. In any case, the provision of this information would not provide an accurate picture, as patients report they may seek an abortion interstate rather than approach the panel.

I turn to the issue of consulting practitioners outside WA. Hon Neil Thomson supports the view that the medical practitioners involved in making decisions about the performance of the abortion should reside in WA. This bill will enable a primary medical practitioner, should they deem it necessary, to consult with a medical practitioner located outside Western Australia. It is acknowledged that in the vast majority of cases the primary practitioner would opt to consult with another medical practitioner based in WA; for example, a colleague at King Edward Memorial Hospital for Women. Notwithstanding that, there might be circumstances when it is appropriate for the primary practitioner to consult with an interstate medical practitioner, such as when a patient has been under the long-term care of an interstate specialist prior to relocating to or visiting Western Australia. No other health care is limited by legislation regarding a practitioner's ability to consult interstate. In addition, regional WA already relies on highly mobile medical practitioners who work across jurisdictions, and legislation should not impede this.

There has been some debate about failed abortions. There is a lot of misinformation on what a late-term abortion is. For some, it is borne out of a genuine misunderstanding and perhaps others are making a deliberate decision to create confusion—I do not know. In my mind, the language is wrong because the abortion did not fail; the pregnancy was terminated. The issue is around those rare cases when, because of cultural, religious or whatever reason, a family makes the decision about a late-term abortion to not have the baby effectively pass away within the mother but to pass away outside of the mother. That is not a failed abortion; the pregnancy has been terminated. Abortions conducted at a later gestational age are very carefully planned medical procedures provided by highly trained practitioners. The process is similar to an induction when medication is administered to induce contractions. In almost all cases, the medication is first administered to the fetus. That means that there can be no signs of life after the procedure. That is done via an ultrasound-guided injection that ensures the medical practitioner can be certain of the outcome. Although almost all women choose that option, a very small number opt out of having that injection. As I said, that might be for cultural or religious reasons, and it is their right to do so. Families are counselled on all possible outcomes, including the possibility of a live birth. In those circumstances, we are not talking about an otherwise healthy fetus. Trying to equate this situation with an otherwise healthy fetus being born early is not comparing apples with apples. These are fatal or severely life-limiting diagnoses when, even if there is a live birth, there is no chance of that neonate ever being discharged home. Comfort care or palliative care are routinely provided if medically indicated.

Hon Nick Goiran also mentioned the number of live births in Western Australia following the termination of a pregnancy. The number of live births following the termination of a pregnancy has significantly decreased over the years due to changes in abortion care services and practices. In 2019, 2020, and 2022 there were zero live births. In 2018 and 2021, less than five were born alive. It is not accurate to compare the viability of babies born preterm with the viability of a fetus born following an abortion. The vast majority of late-term abortions, post-20 weeks, are of structurally abnormal fetuses that are unlikely to ever be discharged home, as I said, even with serious and invasive intervention. As is the case in preterm deliveries, the question of intervention is one for the treating clinicians and the family.

I want to address a correction that needs to be made to a reference to the Criminal Code. The second reading speech I made on Thursday, 17 August contained an error whereby proposed sections 202MN and 202MO were referenced as proposed sections 202MM and 202MN respectively. I place the correction on record and thank Hon Martin Aldridge for bringing that to my attention.

The bill will introduce a criminal offence provision at proposed section 202MN to deal specifically with unqualified persons who perform an abortion. That is to deal with backyard abortions. The bill will decriminalise abortion by moving towards a jurisdictional perspective whereby registered health practitioners acting within the scope of their authorisation will be managed and investigated, as required, by their registration body under the Health Practitioner Regulation National Law. Furthermore, proposed section 202MO will afford a protection from criminal prosecution to those attempting to perform or procure an abortion for themselves.

I want to turn to the issue raised by Hon Wilson Tucker. He spoke quite early in the debate and said that he was a bit surprised at how quickly it was moving. I am paraphrasing him. He wondered whether the conscience vote afforded to members of the Labor Party was a conscience vote in name only. He has heard from Hon Kate Doust that that is not the case. Every member of caucus—the Premier, ministers, parliamentary secretaries and backbenchers—are afforded a conscience vote on this bill and bills similar to it. It is a position that the Australian Labor Party holds dear. It is a position granted by the national executive of the Australian Labor Party. Those who choose to exercise a vote against a government bill, in this case, have already exercised that conscience vote. A number of them in the Legislative Assembly expressed that they would take a different position. They have done it on bills of this nature previously and they will do it on bills of this nature into the future. I do not know what Hon Wilson Tucker was thinking, but I think that what surprised him was that not everyone stood to speak or that some of the tone and shortness of speeches somehow reflected that members were not really being granted the right to make their own decisions. This is not a judgement on anyone, but personally, I think it reflects the fact that the make-up

of the Labor caucus in Western Australia has changed in the 25 years since a bill about abortion was last before the Parliament of Western Australia. It reflects the fact that the make-up has changed, but the member can be assured that we take our history very seriously. If I can summarise it, it is about the collective being stronger than the individual. We take it really seriously. We take our rules and our commitment to a binding caucus really seriously.

We also take very seriously the decision that has been made by our national executive and endorsed many times to grant a conscience vote on matters similar to this one, as a deliberate decision to keep the Australian Labor Party together. Historically, there have been—there may well still be—people who could not remain as members representing the Australian Labor Party if they did not have a conscience vote. The conscience vote is just as important to us as is the binding caucus, because it is how we keep a binding caucus on all the other things we need to deal with. During my time here, I will not see the conscience vote exercised in such a way that members do not feel they have the right to make the decision that they want to make on matters of this kind. I will disagree with them, but I respect their right to be granted a conscience vote.

Hon Kate Doust in her contribution to the second reading debate noted the amendments in her name on the supplementary notice paper. I indicate that the government will not be supporting those amendments, but I respect her right to put them. We will have a discussion and debate about each of them. The honourable member raised a matter around the collection of information. Proposed sections 202MP and 202MQ provide for a model to collect information about the provision of abortion. Collecting data that is relevant to service planning and health policy making is useful. The parameters for the collection of this data were carefully considered during the development of the bill in close consultation with clinicians and the office of the Chief Health Officer. In our judgement, the proposed model adequately balances the level of detail required for the provision of services with the importance of ensuring that patient confidentiality is protected. Members of Parliament will continue to be able to request aggregated statistical information about abortion services.

The honourable member also referenced correspondence from the Australian Medical Association requesting a process for the investigation of adverse health events, such as an unexpected live birth following an abortion. The Department of Health is not aware of any instance of an unexpected live birth occurring in Western Australia. As I said earlier, these are carefully planned medical events. However, all health services are required to have robust clinical incident investigation processes in place; these are often referred to as severity assessment code 1 clinical incidents, or SAC 1. Private facilities have similar procedures in place. It would be entirely appropriate for an unexpected live birth to be reviewed through the existing reporting pathways.

I welcome this opportunity to confirm the point made by Hon Dr Sally Talbot that the proposed amendments to the Coroners Act will have no impact on the process to register births and deaths; this was a query raised by Hon Tjorn Sibma. In accordance with section 13(1) of the Births, Deaths and Marriages Registration Act 1998, if a child is born in this state, the birth must be registered under that act, and that act is not being amended. Therefore, any live birth that occurs after an abortion procedure must be registered with the Registry of Births, Deaths and Marriages; similarly, the death must be registered. A parent may request a birth certificate for the baby, just like any other parent.

A number of members made mention of the considered and well thought out 1998 abortion bill, and how each provision was diligently reviewed and debated by all members in both houses. Yes, it was. The 1998 bill reflected the will of Parliament some 25 years ago. In 2023 the needs of WA women have necessarily changed, and the make-up of our Parliament has changed. The WA community, women and our health workforce have made their views clear, and the Abortion Legislation Reform Bill 2023, as it sits before members, reflects that.

Before I say the final words about commending this bill to the house, I am going to ask members—even though I probably do not have to ask everyone in the chamber now—to please give consideration to making your contributions with compassion. Express your views as strongly as you need to. Ask me every question about every clause, however you need to do it. Ask me to explain, define and clarify everything you want me to explain, define and clarify. But given the contributions that were made to the second reading debate, if you are able to influence anyone who perhaps may not be compassionate, please do so, because I have a duty of care and I want people to be well through this process.

It is with enormous pride that I commend the bill to the house.

Question put and passed.

Bill read a second time.

Committee

The Deputy Chair of Committees (Hon Stephen Pratt) in the chair; Hon Sue Ellery (Leader of the House) in charge of the bill.

The DEPUTY CHAIR: I draw members' attention to supplementary notice paper 120, issue 1, and the proposed amendments.

Clause 1: Short title —

Hon NICK GOIRAN: As we consider clause 1, I just want to take a moment to look at what I am going to describe as phase 1 abortions. We may come up with a different descriptor and I am very relaxed about the descriptor, but when I say "phase 1", for the present time, under the current law, I am talking about pre-20 week abortions. Later on I will talk about phase 2, which we have talked about as late-term abortions. The only reason I am using the term "phase 1" is that we have a useful descriptor for post-20 week abortions, which is late-term abortions, but I do not know what to call phase 1 abortions. I do not necessarily call them early abortions, for obvious reasons, so I am going to call them phase 1 and phase 2 abortions, if the Leader of the House is happy to work with that, but as I say, I am happy to use a different descriptor if there is a more elegant term. At the moment, phase 1 abortions can occur up to 20 weeks. This bill is overtly extending that to 23 weeks. Phase 1 abortions have been generally described under the current law, perhaps a little inelegantly, as unrestricted abortions, whereas late-term abortions—the phase 2 abortions—have certain extra restrictions associated with them. It is perhaps inelegant to say that abortions undertaken pre-20 weeks are unrestricted because there are some restrictions—for example, in terms of who can perform the abortion. The point of my initial question was: whatever those limited restrictions are—as I said, they have been inelegantly referred to as unrestricted phase 1 abortions—will those restrictions be the same moving forward, and is the only thing that we are doing simply moving the gestational threshold from 20 weeks to 23 weeks?

Hon SUE ELLERY: I understood what the honourable member said, but I will put it on the record so that we are both using the same language. The member's question is about what will change in respect of the requirements to get a termination pre-23 weeks from what currently applies to those who get an abortion pre-20 weeks. Those who seek an abortion pre-20 weeks currently must consult two medical practitioners. That will change to one. The bill will remove the requirement for mandatory counselling completely. Section 334(3) of the Health (Miscellaneous Provisions) Act sets out statutory justifications for an abortion. The bill will remove the requirement for there to be statutory justifications for an abortion. Section 334(3) states —

(a) the woman concerned has given informed consent; or

(b) the woman concerned will suffer serious personal, family or social consequences if the abortion is not performed; or

(c) serious danger to the physical or mental health of the woman concerned will result if the abortion is not performed; or

(d) the pregnancy of the woman concerned is causing serious danger to her physical or mental health.

Hon NICK GOIRAN: I thank the Leader of the House; that is helpful. I will just unpack those things momentarily. Will the class of persons who can perform a phase 1 abortion remain the same?

Hon SUE ELLERY: There is a fourth change, honourable member. Currently, only medical practitioners can prescribe medication for a medical abortion. The bill before us today will expand the category of clinician who can prescribe the drugs required for a medical abortion to include registered health practitioners.

Hon NICK GOIRAN: Please forgive me for persisting with this, but I asked my earlier question because I was trying to get clarification around the distinction between phase 1 abortions, and I was told that there were three things. Firstly, at the moment, pre-20 weeks, there is a requirement for two doctors; moving forward, it will be one. Secondly, "mandatory counselling", the phrase the Leader of the House used, will not be a requirement moving forward. We will unpack that a little further. Thirdly, some form of justification must be provided pursuant to the relevant provision, being section 334(3). It was left there. It was only then—I say this gently and politely—after I asked about who can conduct abortions, that the fourth thing was introduced. With genuine good intent and goodwill, I ask: will anything else be different with the phase 1 abortions? I want an exhaustive list so that we ask this only once and can then go through each of those things.

Hon SUE ELLERY: Fair cop. I asked the question and was given three. I asked again and was given four. I apologise for that. There was no bad intent.

Hon NICK GOIRAN: I thank the Leader of the House; I appreciate that. In terms of the method used in phase 1 abortions—again, if I use inelegant language at any time during this debate or there is a better medical term, I am happy to be corrected and to use that in the future—is a suite of methods available at this time and will that whole suite of methods be available moving forward? Are we adding anything?

Hon SUE ELLERY: I think it would be helpful if we had someone with the member's qualifications sitting here and someone with the member's qualifications sitting there, then the language of both of us would be correct, but that is not the case. The suite, if I can use that word, of measures that is used now for abortions under nine weeks is medical only—that is, a pill is taken. I am being advised that surgical could be done, but the general practice is medical. Above nine weeks, it is surgical until the 14 to 16-week window when it is a clinician's decision and it could be either surgical or medical. Additionally, if it is medical, feticide may be done if it is over 22 weeks.

I am being advised that there is not a tick box that "you will do this". It is entirely dependent on the particular circumstances, the clinician, the clinical situation of the fetus and the mother—all of those things.

Hon NICK GOIRAN: I am just going to take a moment to make sure we have that all right. Before I do that, just to clarify: will all those methods and the different time frames to which the Leader of the House referred remain the same irrespective of this bill—that is the case at the moment, and will it be the case moving forward?

Hon Sue Ellery: Yes.

Hon NICK GOIRAN: Okay; thank you. It sounds as though prior to nine weeks it is almost exclusively the case that it is medical only, albeit that it is at the very least theoretically possible to use a surgical method. It sounds as though that is incredibly rare.

Hon SUE ELLERY: I would not use the term "rare". The advice I am given is that it is generally medical but not always.

Hon NICK GOIRAN: There are circumstances in which it is surgical. Is it possible to give an indication as to how frequently that is the case? I understand that the Leader of the House is not happy with me using the term "rare". We are saying that it is generally medical. Is it overwhelmingly generally that it is the case? I am not looking for precise statistics but just to get a better understanding. I suppose the better question might be: why would somebody prior to nine weeks choose surgical instead of medical?

Hon SUE ELLERY: I am sorry that I am not able to give the member precise numbers, but the advice I have is that it could be for a range of clinical reasons. It could be that the patient cannot tolerate that medication. It could be that they cannot access that medication. It could be for a range of things, but it is generally medical. As I said, the general practice is that under nine weeks it is medical only.

Hon NICK GOIRAN: I am happy with that. I should never use the word "happy" in this debate, but I understand the point the Leader of the House made. According to my notes, the Leader of the House indicates that in the next range, between nine and 14 weeks, it is surgical only. Is medical not possible, or never done, in the nine to 14-week range?

Hon SUE ELLERY: It is above 19 weeks. I did say 14 to 16 weeks, but the honourable member might have missed that.

Hon Nick Goiran interjected.

Hon SUE ELLERY: What I said—the member might have missed it—is that there is a window from 14 to 16 weeks, so between nine weeks and 14 to 16 weeks it is generally surgical. It is a clinical decision because the view is that at that stage a person will not be given medication and sent home. They will want to be in a clinical setting so that the right decisions can be made if there is a problem—technical language.

Hon MARTIN PRITCHARD: There would be different types of surgical in those early weeks. I do not want to show my ignorance, but I believe there is a curette and other methods, so my belief is that there is not just one type of surgical procedure.

Hon SUE ELLERY: That is correct.

Hon NICK GOIRAN: According to my notes, up to nine weeks it is generally medical. There are occasions in which surgical is considered appropriate on a case-by-case basis. Then, according to my notes, I had heard, either incorrectly or otherwise, that between nine and 14 weeks it was surgical only, and then the minister said that there was this further range of 14 to 16 weeks, which I understood was surgical, but it could also be medical.

Hon Sue Ellery: Your description is accurate.

Hon NICK GOIRAN: Where there is some confusion on my part is that if between nine and 14 weeks it is seemingly always the case that it is surgical, why is it that at 14 to 16 weeks, when it is often surgical, we suddenly reintroduce medical again? We talked earlier that prior to nine weeks, it is generally medical and it can be surgical. It just seems a little odd that between nine and 14 weeks suddenly the medical model disappears. Could we get an explanation for that?

Hon SUE ELLERY: So that we have clarity, which goes in part to the issue raised by Hon Martin Pritchard, I will read out the definitions for the procedures —

- Surgical methods include vacuum aspiration, curettage, dilation and evacuation.
    - **Aspiration techniques** (gentle suction to empty the uterus) along with **curettage** can generally be used up to 14-16 weeks. The procedure is generally performed under anaesthetic and/or sedation. Occasionally women do not have full general anaesthetic, but have milder sedation and

> a local anaesthetic may be used to numb the cervix … The anaesthetic and sedation (or the general anaesthetic) that is given to the woman also flows through to the fetus.
>
> - For women over 14-16 weeks (depending on the service provider), a slightly different process is used to ensure all the products of pregnancy are removed.
>
> - **Dilation and evacuation** involves the dilation of the cervix and surgical evacuation of the uterus. This may involve curettage and surgical dissection and removal of the foetus, placenta and other tissue. In such circumstances, the patient is placed under general anaesthesia. The foetus is anaesthetised via the woman's anaesthetic.
>
> - Induced labour—Inducing labour is a non-surgical abortion method that usually occurs post 13 to 14 weeks, and may be preceded by a foeticide process (at gestations above 22 weeks).
>
> - There are different methods of conducting a *feticide* process. Feticide is usually performed for gestations greater than 22 weeks …
>
> - In King Edwards Memorial Hospital this generally involves the injection of potassium chloride directly into the foetus under ultrasound guidance. The foetus' cardiac activity and signs of life are monitored in utero, until it is confirmed that the foetus is no longer alive. Only then, is labour induced. At KEMH, the medical staff in the room (always a minimum of two) look at the real-time ultrasound image to confirm that asystole has occurred and is persistent (ie confirms that the procedure has worked). Maternal morphine and IV midazolam is used for maternal and foetal sedation during feticide.
>
> - There are other acceptable methods of feticide, including use of intra-uterine …
>
> - In practice—second and third trimester
>
> - At King Edwards Memorial Hospital, second (after 16 weeks) and third trimester abortions are generally a medical abortion ie the induction of labour, which may or may not involve feticide. Vacuum aspiration, curettage, dilation and evacuation may be performed where a medical abortion provided for the earlier stage of pregnancy does not work …

At a private clinic —

> second trimester abortions involve dilation and evacuation up to 19.6 weeks (and up to 23-24 weeks in Victoria/Queensland). This is a different process to that generally performed at KEMH for mid-trimester abortions … Feticide is not done, as it is not indicated at gestational aged below 20 weeks and for Dilation and Evacuation procedures, the fetus is anaesthetised by the anaesthetic and analgesic agents given to the woman.

Hon NICK GOIRAN: That was a lot of information to take in. I appreciate the minister reading it out. Is that information in a form that could be acceptably tabled at this time?

Hon SUE ELLERY: I cannot table it now, but I might get someone to do a cut and paste, if someone can do that, and we can give the member that bit of it.

Hon NICK GOIRAN: I think that would be helpful. I appreciate that we will have access to the uncorrected proof later this evening and I also appreciate that we will be adjourning proceedings in the not-too-distant future this afternoon and then not coming back for more than a week and a half. There will be ample opportunity to get across that detail. I thank the minister for reading that out now. One of the things she mentioned in terms of the method is that after 22 weeks it may be the case that feticide is used. As I understand it, that method was introduced in Western Australia in 2017. Can the minister confirm whether that is the case?

Hon SUE ELLERY: I do not have that advice at the table. I can probably take it on notice and see whether we can find out for the honourable member. It might not be today.

Hon NICK GOIRAN: I will see whether I can find it in my notes to assist the minister and otherwise provide it later, but the minister could, at the very least, take that on notice. I have it here in a response from Hon Roger Cook, who, at the time, was the Minister for Health. He was replying to the Standing Committee on Environment and Public Affairs. At that time the chair was Hon Matthew Swinbourn. This is a letter from Hon Roger Cook dated 20 July 2018. I might add in passing, as the minister would be aware, having been an observer of this type of area of law for a long period and pursued various issues associated with it, that particular inquiry undertaken by the Standing Committee on Environment and Public Affairs chaired by Hon Matthew Swinbourn was the most comprehensive of all of the inquiries undertaken by far. A number of petitions have been referred to that committee when the examination by the respected committee has been cursory at best. This particular iteration of the

committee actually frankly bothered to ask some of the questions that need to be asked. Roger Cook responded to the question —

> **Has current practice been reviewed in the last ten years in relation to clinical practice, ethics and the law in relation to the management of late term abortion?**

In his letter from 20 July 2018, Hon Roger Cook responded —

> In June 2017 KEMH —

King Edward Memorial Hospital for Women —

> introduced the practice of feticide for terminations of pregnancy after 22 weeks, including those for lethal abnormalities.

This is more of a question on notice before I get to my question for now. The question on notice asks what brought about the introduction of feticide in June 2017. If it is one of the methods being used now, and has been used since June 2017, what brought that about and how were those late-term abortions being conducted prior to that time? I appreciate that it is unlikely the minister will have that information at her disposal right now, but if we could get that information taken on notice, that would be appreciated.

My question for the present purpose is about the minister's response earlier and the response from Hon Roger Cook, both of which indicate that this practice takes place after 22 weeks. What is significant about 22 weeks? Why has that been chosen as the appropriate time for feticide?

Hon SUE ELLERY: I am advised that under 23 weeks the fragility of the fetus means that it will not make it through the birth canal and will not survive the birthing process. Above 23 weeks, structurally the fetus may make it through the birth canal and therefore adding feticide, if you like, ensures that the termination is successful.

Hon NICK GOIRAN: The minister in her response referred to the significance post 23 weeks, yet in her earlier response she said that feticide is to be used at 22 weeks, as did Hon Roger Cook. Can we get a distinction between why we were introducing feticide at 22 weeks and now we are referring to 23 weeks? What is the significant difference in one week? It is obviously seven important days of growth for the unborn baby, but is there a medical reason why feticide is being introduced at 22 weeks and not 23?

Hon SUE ELLERY: The 22 to 23 weeks recognises that fetuses, like us, are different. The advice I have been given is about relying on fetus gestation. The information about fetus gestation is much more accurate if one comes to the pregnancy earlier rather than later. It is harder later to be precise about the gestation. As a cautionary measure, clinicians rely on 22 to 23 weeks. It is necessary to note that late-term abortions are because something is terribly wrong so it makes it even harder to be precise about gestation. Some clinicians will use the language 22 weeks, some will say 23 weeks and some will say 22 to 23 weeks to take a cautionary approach. That is the reason. It will depend on the accuracy of the assessment of gestation, bearing in mind with those fetuses there is something already wrong. That makes it even harder to be precise.

Hon NICK GOIRAN: There is a number of lines of inquiry associated with that. One of them is that there is something—forgive me for not having the transcript available at this time—severely wrong. I think that is the phrase the minister used for late-term abortions.

Hon Sue Ellery: I'll accept that.

Hon NICK GOIRAN: Yes, when something is severely wrong. Is it the case that those late-term abortions only happen for lethal abnormalities?

Hon SUE ELLERY: It is not always what I might describe as "lethal abnormalities". It could be the mother. It could be that there is serious risk to the mother. It would depend entirely on the circumstances.

Hon NICK GOIRAN: Are we saying then that late-term abortions—I did not really want to go into late term. We were looking at what I call phase 1 abortions and the different methods, then we got to feticide. We have gone down this particular path that has taken us to late terms. Since we are on that, is it the case that late-term abortions either happen because the unborn baby has a lethal abnormality or the mother has some other kind of condition? Are they the two scenarios in which late-term abortions take place?

Hon SUE ELLERY: It is the case when the mother or the unborn child has a severe medical condition that in a clinical judgement justifies the procedure. It is the fetus or the mother.

Hon NICK GOIRAN: That is interesting, because, again, in the inquiry that the Standing Committee on Environment and Public Affairs took on in 2018, Hon Roger Cook indicated that late-term abortions were taking place for nonlethal abnormalities. When quizzed on what those nonlethal abnormalities might be, they included

what he described as nonlethal chromosomal anomalies, which, because of some research I have done, I have always taken to include, in part, Down syndrome, but we will pick that up on another occasion.

With regard to the distinctions in phase 1 between the current regime and what is proposed moving forward, the minister indicated that, at present, it is necessary for two doctors to be involved and that, moving forward, only a single practitioner will need to be involved. Even though this is a 59-clause bill, clause 8 is really the most substantive provision. There will obviously be a lot of questions about clause 8 and less so about other clauses. It is clearly the case that under clause 8, a single medical practitioner will be able to undertake an abortion up to 23 weeks, assuming that this bill passes unamended. Which clause will remove the existing provision that requires two doctors to be involved for what I have described as phase 1 abortions?

Hon SUE ELLERY: To answer the honourable member's question in the short form, division 6 of the bill, which deals with amendments to the Health (Miscellaneous Provisions) Act 1911, seeks to take the elements out of that act.

Hon Nick Goiran: In part 4?

Hon SUE ELLERY: Yes, in part 4. Clause 58, on page 53 of the bill, seeks to delete section 334, and clause 8 of the bill seeks to replace that section with proposed section 202MC in new division 2, which states "a medical practitioner is authorised to perform".

Hon NICK GOIRAN: I appreciate that. That is helpful in comparing and contrasting the existing scheme. Sorry, deputy chair; I will resume my seat.

Hon KATE DOUST: Can I just interrupt for a second? I have tried to get the call a couple of times. I appreciate that it is really unusual for someone on this side of the chamber to seek the call, but you are looking only at that side. I am going to let the member ask this one and then I am going to ask something entirely different, if that is all right.

Hon NICK GOIRAN: I apologise to the honourable member. We have dealt with the current scenario in which two doctors are involved. Moving forward, there will be one doctor, and the minister has helpfully drawn to our attention the interaction between clause 58 and the provision within clause 8 that deals with that. The term "mandatory counselling" has been bandied around and I just want to get a proper understanding or an appreciation of what it means in practice. I know that during the second reading debate, one or more members quite fairly made the observation that we cannot make anybody have counselling. It is a statement of the bleeding obvious, really. When we talk about removing mandatory counselling, what exactly do we mean by that? Are we removing the requirement for a medical practitioner to provide information about counselling or are we removing the obligation on the medical practitioner to provide counselling at that time? Can the minister clarify exactly what we are removing?

Hon SUE ELLERY: It will come out under the same clause that I just referred the member to—clause 58. In section 334(5) of the Health (Miscellaneous Provisions) Act, there is a specific definition of "informed consent". It states —

> ***informed consent*** means … where —
>
> (a) a medical practitioner has properly, appropriately and adequately provided her with counselling about the medical risk of termination of pregnancy and of carrying a pregnancy to term; and
>
> (b) a medical practitioner has offered her the opportunity of referral to appropriate and adequate counselling about matters relating to termination of pregnancy …

And it goes on. Right now, the provision defines "informed consent" in a way that does not apply to the provision of any other health service. Informed consent does not mean that for anything else. In respect of getting a termination, the medical practitioner must properly, appropriately and adequately provide her with counselling.

Hon KATE DOUST: I thank Hon Nick Goiran for asking questions and I appreciate the minister's responses; they have been very helpful in building up the image of how the process currently works and how it will work moving forward. I am going to take the minister off on a different tangent just to give both members a bit of clear space.

I refer to the discussion paper. I raise this now because I ran out of time during my second reading contribution and did not get to ask this question. On page 8 of the discussion paper from November last year, under the heading "Data on abortion care", there is a reference that I found quite interesting. It states —

> The abortion rate per 1000 women of reproductive age (15 to 44 years) has declined from 19.5 in 2002 to 14.9 in 2021.

That is 14.9 women per 1 000. The minister might not have this today, but has any analysis or research been done about what I would regard as a reasonable decline over that period? I do not know off the top of my head whether

we have had a decline in the number of pregnancies in the state for that age group or whether other factors have led to that decline in the number of women seeking an abortion, but, if so, what would those factors be? That is my first question.

Hon SUE ELLERY: We do not have a definitive answer. I can see whether anyone can find a referral to anyone who has done research on it, so I will take that on notice. At the table, it could be, as the member suggested, a decline in the number of women who are getting pregnant. It could be due to access to things such as the morning-after pill. It could be improved contraceptive efficacy. Somebody made a comment at the table, not to be flippant, about COVID. I suggest there were more pregnancies during COVID. The real answer is that we do not have a definitive answer. I will find out whether we can find any research to refer the member to, but that is the best I can do at this point.

Hon KATE DOUST: I pick up on the minister's comment about the use of the morning-after pill and perhaps having been par for the course for that reduction, but I am just wondering whether there is any mechanism for recording stats about how many people would access and use that medication in that very early stage of pregnancy.

Hon SUE ELLERY: I am not sure that I am going to give the member an answer on that, because we could probably track it through tracking prescriptions but the state does not collect that information. It might be information that is held by the federal government given that it is responsibility for pharmaceuticals, but we do not have access to that information.

Hon KATE DOUST: I appreciate that. I am looking at the next paragraph on that page where it refers to the percentage of abortions that occurred at particular times along the process. I referred to it during my second reading contribution. I am wondering about the rapid advances in technology. In my situation, when I had three children over six years, I saw the significant changes and the level of detail that was enabled. I imagine that in the last 25 years there has been even more significant advances in the nature of the information that can be provided, the detection of abnormalities and other difficulties. We are talking about crossing that threshold of 20 to 23 weeks in that first instance. Has any work been done on the impact of the change in technology that has probably shifted forward to the earlier stage of pregnancy the number of terminations that we see here? I think it is 83 per cent. The minister knows I am interested in how technology is used, so I am just wondering.

Has the government given consideration to how technology will change earlier detection? I imagine that day is shifting forward. It used to be they would go in for their first ultrasound at nine weeks. They would go in for another set of tests about 16 weeks and, at about that point, they could detect gender and other issues, and then they would hit 19 weeks and they would get another scan with a range of other tests. What is in place now? Has the use of more current technology enabled those detection periods to be brought forward?

Hon SUE ELLERY: I can provide a general answer, which is that, essentially, yes, technology and changes in medical research have made a difference in how early or otherwise we can detect a range of things, including pregnancy. I am not aware whether the state holds any research or the extent to that. We can ask. I doubt that would be held by the state. I suspect someone at a university somewhere has done work around that or maybe work has been done in other jurisdictions. We do not have that information other than we can all see that the kind of scanning technology has fundamentally changed in the last 25 years.

Hon MARTIN PRITCHARD: My understanding is that a general scan used to occur at 18 weeks and now it is more likely to occur at 20 weeks—generally, because we are expanding ourselves, like I am. Can the minister make a comment about that?

Hon SUE ELLERY: That is correct.

Hon KATE DOUST: Those examples I gave the minister were probably ancient examples now in terms of those time frames that were allotted. We have new technology, new understanding and new forms of detection. In practical terms for pregnant women who do a home test and discover they are pregnant, have any of those structured tests been brought forward because of new advances in technology? Do they not wait until 16 weeks? Do they do that set of tests at an earlier stage now? Do they have the capacity to do the 19 or 20 weeks scans at an earlier stage?

Hon SUE ELLERY: I am conscious of the time. I can say at this point we might have to come back to it. There is a difference between prognostic testing and diagnostic testing.

Committee interrupted, pursuant to standing orders.

[Continued on page 4274.]