VOLUNTARY ASSISTED DYING BILL 2019

Consideration in Detail

Resumed from 18 September.

Clause 115: Board established —

Debate was adjourned after clause 114 had been agreed to.

Mr P.A. KATSAMBANIS: This clause is in part 9, which establishes the Voluntary Assisted Dying Board. I just want to give the minister an opportunity to put on the record what the role of the board is intended to be and why it was seen as necessary to establish the board in order for this legislation to work.

Mr R.H. COOK: I will decline that opportunity; we have discussed the board and its monitoring and oversight role at length. One of the recommendations of the Joint Select Committee on End of Life Choices and the Ministerial Expert Panel on Voluntary Assisted Dying was that an oversight body should be established to carry out certain functions in relation to voluntary assisted dying.

Clause put and passed.

Clause 116: Status —

Mrs A.K. HAYDEN: Clause 116 states —

> The Board is an agent of the Crown and has the status, immunities and privileges of the Crown.

Can the minister explain what status, immunities and privileges of the crown are held by the board?

Mr R.H. COOK: All bodies that are established by statute have this provision.

Clause put and passed.

Clause 117: Functions of Board —

Mr Z.R.F. KIRKUP: Clause 117 makes provision for the functions of the board, and clause 117(b) states, in part —

> to provide to the Minister or the CEO, on its own initiative or on request, advice, information and reports on matters relating to the operation of this Act …

We talked last night about a more regular update to the Parliament, more broadly speaking. I realise that there is an annual report. I pointed to a number of other flagship pieces of legislation on which there are quarterly updates to the Parliament. I realise that in this case, the legislation will grant to the board its own initiative to provide reports and information, and the initiative is bound only to the minister or the CEO, or delegates thereof. Why is it that we have not included the Parliament as well, as part of that initiative, to ensure that they can provide some sort of exposure to us, as legislators, to see how the legislation is travelling?

Mr R.H. COOK: The member is quite right; we did canvass this at length last night. As I said, this is obviously the minimum requirement. The board is absolutely capable of providing subsequent reports—clause 117(b) will provide it with the capacity to do so. Parliament can request information of the board, and in relation to the operation of the legislation, the board will have to provide an annual report, as all operating boards do. The board will have an advisory function, such as the annual report to the CEO, but in addition to that, it will also provide advice and recommendations on voluntary assisted dying–related policy, legislation and strategic directions to the minister and the Parliament.

Mr Z.R.F. KIRKUP: I appreciate that, minister. Just to confirm, because it is not enabled in this part of the legislation: could the board take it upon itself to provide information directly to the Parliament, if it so chose, or would that still have to come via the minister?

Mr R.H. COOK: Yes, it would be via the minister.

Mr P.A. KATSAMBANIS: In comparing the functions that will be given to the board in Western Australia with the functions given to the board in the Victorian Voluntary Assisted Dying Act 2017, the Victorian board was given a power to review the exercise of any function or power under the act. Why has that function not been included as one of the functions of the Western Australian board under clause 117?

Mr R.H. COOK: The member is referring to the investigatory power; is that correct?

Mr P.A. KATSAMBANIS: I am referring to a review power. It can review the exercise of any function or power under this legislation. There is a difference between investigation and review. It is a well-known difference. A review gives the power to basically look at how the legislation is functioning and then make recommendations to the minister, the CEO or anybody else about the overall functioning of the legislation. That is very clear in the Victorian legislation. I just wondered why it was not included in the functions and powers of this board.

Mr R.H. COOK: I draw the member's attention to paragraph (b), which states that the functions of the board include "any recommendations for the improvement of voluntary assisted dying".

Mr P.A. KATSAMBANIS: So the minister would argue that that does exactly the same.

Mr R.H. Cook: That is correct. That would be my contention.

Mr P.A. KATSAMBANIS: I will take that on board; thank you.

The Victorian legislation also includes a function to promote continuous improvement in the quality and safety of voluntary assisted dying by those who exercise any function or power under the act. That whole sense of continuous improvement indicates an ongoing brief to that board that it monitor what is happening, stay actively involved and act as, I guess, a repository of knowledge about this whole area. Is that covered under the Western Australian legislation, because I do not see it directly reflected in the bill? Obviously, there are nuances in drafting language, so I am seeking an idea of where that would fit in under our legislation.

Mr R.H. COOK: Under paragraph (a), the board is to monitor the operation of the legislation and, under paragraph (b), it is to make any recommendations, including for the improvement of voluntary assisted dying. I observe that the ancillary functions of the board are to promote compliance with the requirements of the legislation by the provision of information and advice to the CEO of the health department about voluntary assisted dying matters, to promote continuous improvement in the quality and safety of voluntary assisted dying by the provision of information and advice to the CEO of the health department about VAD matters, and to consult and engage with the community and professional groups as part of its research function.

Dr D.J. HONEY: Do we have an estimate of the likely cost of the board itself? I appreciate that there will be staff and the like. We had a generic cost of the whole process, but do we have something that relates specifically to the cost of the board itself?

Mr R.H. COOK: No, we do not at this point. Obviously, any board will be subject to oversight by the Public Sector Commissioner and the Public Sector Management Act. From that perspective, the commissioner provides advice about the appropriate management and remuneration of any board. At this point, we do not have that line of sight. It requires the Public Sector Commissioner to form a view about the level of obligation of board members, the time that they would be required to be involved and their individual responsibilities. That will be determined at a later date.

Dr D.J. HONEY: The other area I want to explore a little is public engagement. I do not wish to deviate too far, but we had a lot of discussion during debate on the Infrastructure Western Australia Bill about the extent to which that body would engage separately in community discussion outside of government. Does the minister think that that public engagement is likely to also include the board separately engaging in discussion or promotion and those sorts of activities, or does he think that that will be limited very much to a political function, if you like, through the minister?

Mr R.H. COOK: I would not characterise it as political, but the proper management and functioning of the law would certainly be a function of the CEO. From that perspective, it would be the responsibility of the CEO to undertake the functions that the member speaks about. Obviously, the CEO will be informed by research, analysis and data collection that the board will undertake.

Mrs A.K. HAYDEN: Mr Acting Speaker, I seek some clarification and maybe some direction and willingness from the minister. I note that there is an amendment on the notice paper to be put forward after this clause is debated, but that member is not in the chamber. She may have been delayed by the traffic, as were quite a few members today. Is there any avenue to return to that amendment? Under standing order 180, clauses may be postponed, so I just want to make sure that the member is not penalised because of a tragic accident that occurred on the freeway this morning and she is unable to move her amendment on the notice paper. I ask for some direction if I may.

The ACTING SPEAKER (Mr I.C. Blayney): I will seek someone to move the amendment on behalf of the member for Girrawheen, but we will deal with clause 117 first. If the member would like to move it on her behalf, that would be fine.

Mrs A.K. HAYDEN: Under standing order 180, is there a provision for the member who has advised of an amendment to go back to it?

The ACTING SPEAKER: Apparently not, because it is not a clause; it is an amendment. But it can be moved by somebody else on her behalf. I am told that the member for Girrawheen is aware of that.

Mr P.A. KATSAMBANIS: Still on clause 117, "Functions of Board", under paragraph (c), the board has the power to refer to a series of persons or bodies any matter in relation to voluntary assisted dying that is relevant to the functions of the person or body. Paragraph (c) provides that it is a function to refer a matter to the State Coroner

appointed under the Coroners Act 1996. We had some debate—I am not sure whether the minister was at the table; I think it might have been the Attorney General at the time—about the point that this area would not ordinarily be subject to coronial investigation; it would not need to go to the coroner. What things would trigger a referral from the board to the State Coroner in these circumstances under the bill? It appears from previous consideration that the coroner will have very little or nothing to do with this regime.

Mr R.H. COOK: I can understand why it raises the member's curiosity but not his anxiety. The member will understand that if the Voluntary Assisted Dying Board has any concerns about an incident or a series of events, it will draw it to the coroner's attention. The member will also notice that the board can refer matters to a range of other agencies and individuals, including the police. It is not an automatic referral, but it is intended to ensure that the board has the power to elevate those matters if it has concerns.

Mr Z.R.F. KIRKUP: I have a couple of questions about clause 117(c). The member for Hillarys has covered a number of questions as well. I am particularly interested in paragraph (c)(v), which reads —

> the chief executive officer of the department of the Public Service principally assisting in the administration of the *Prisons Act 1981*;

As the corrections portfolio is currently structured, would that be the Department of Justice and the Commissioner of Corrective Services, and why is that referral power there?

Mr R.H. COOK: I am informed that prisoners will not be excluded from the provisions of the Voluntary Assisted Dying Act; however, prisoners are held in care, so any issue involving prisons obviously has to include the director general—the chief executive officer is the generic term—of prisons. It is important that the board has the capacity to refer. If there is a death of any nature in custody, that is subject to oversight by the coroner as well.

Mr Z.R.F. KIRKUP: The first part of my question was about the director general of the Department of Justice or the Commissioner of Corrective Services. By the minister's answer, I would assume it would be the director general of Justice.

Mr R.H. Cook: That's right.

Mr Z.R.F. KIRKUP: Under paragraph (c), matters can be referred to seven different areas. I am trying to understand where the Health and Disability Services Complaints Office or the Australian Health Practitioner Regulation Agency would fit in. I appreciate that police would look at their own line of inquiry, as would the Registrar of Birth, Deaths and Marriages and the State Coroner. How would the minister see the interplay between HADSCO and AHPRA? The CEO has his own functions as well, that he can look into. I appreciate that a lot of areas can be referred, under the referral powers of the board, but I want to make sure that we do not create a situation in which there are so many people responsible that no-one is responsible—that so many different avenues can be pursued as part of the referral by the board that the matter gets lost. I am keen to understand the difference between those two, for example.

Mr R.H. COOK: It depends on the nature of what the board is investigating, and the way it manifests itself. It may not be an issue of life and death; it may simply be a disputation between a member of the public or a patient and their doctor, in which case those issues might ordinarily be better handled by HADSCO, which is responsible for mediating an agreeable outcome between a patient and their medical practitioner. It may be a more serious matter, in which case the board may form a view that another agency would be more appropriate. It may be considered of a criminal nature, in which case it can go even further. This provision is simply to make sure that a range of options is available to the board. HADSCO has a pretty prescriptive role. It is not an arbitrator, by the way; it is simply a mediating service between the patient and the medical practitioner. There would be circumstances in which it is more appropriate to handle the matter at that level, to get a good outcome. In other circumstances, the board may form a view that the matter needs to be elevated to the chief executive officer or, as I said, if it is a more serious nature, to police.

Mr Z.R.F. KIRKUP: AHPRA, for example, deals with the licensing of practitioners, so I imagine the interplay there would be—not to verbal the minister—that HADSCO would be for that minor mediating level between the patient and practitioner, whereas AHPRA goes to the regulation of possible misconduct by that practitioner. Would that be a correct assertion?

Mr R.H. Cook: Yes.

Mr Z.R.F. KIRKUP: I appreciate that. If I can just go back for a moment to the issue of prisons. Obviously, the director general is charged with the care of all prisoners. I think every referral body so far makes total sense, but to me it seems a bit unusual that the director general of prisons would be involved. He has charge of all prisoners, but this relationship is between the practitioner and an individual patient, regardless of the setting. In a criminal situation it would be police, if there is a coronial investigation. Is this reflected in other jurisdictions? Is there

interplay; that is, does the prisons CEO in Victoria, say, have the same level of insight? To be perfectly frank, I cannot understand why prisons have been included in the first place. I realise that the director general is in charge of the prisoners, but I would argue that the relationship is largely between the patient and the practitioner.

Mr R.H. COOK: I am advised that it is necessary in Western Australia to advise the chief executive officer who is the administrator of the corrections portfolio—presently the director general of the Department of Justice—when a prisoner serving a long-term sentence or a continuing detention order has been given final approval for voluntary assisted dying. It would be unlikely, for instance, to take place in a prison setting; they would most likely be transferred to a hospital. It is important that there is capacity to refer and communicate. It goes to the CEO of Justice, because that is the relationship with the CEO of Health and other sections of the public sector, rather than going down the chain of command, if you like. It is essentially an opportunity to make sure that there is good communication.

Mr Z.R.F. KIRKUP: I will move to clause 117(d) and (e), which read —

> (d) to conduct analysis of, and research in relation to, information given to the Board under this Act;
>
> (e) to collect, use and disclose information given to the Board under this Act for the purposes of performing its functions;

I presume this is the capability to provide for statistical information to be collated and disseminated. Is that correct?

Mr R.H. Cook: Yes.

Mr Z.R.F. KIRKUP: This is not just for the annual report. Could this also go to universities or other areas of medical research that might be looking into it?

Mr R.H. COOK: Absolutely. The member for Nedlands spoke about the role of the Education and Health Standing Committee. It might be undertaking a review or some analysis of these issues. It would go to the board to collect the data that it needs to inform its decisions and analysis.

Mr Z.R.F. KIRKUP: I move to paragraph (f), and that is all I have under clause 117. Referring to any other function given to the board under this legislation, if it passes, there is a review clause. When we reach the review point, will the board play a relatively central role as part of that review? I notice that, as part of the implementation, the clinical expert panel will create this whole process. The board then carries the legislation through for the monitoring of its performance. Would that be delegated to the board under paragraph (f)?

Mr R.H. COOK: That would be an example of what the board will be doing. Under the review clause, the agency considers a range of technical and substantive changes that it thinks need to be taken on board in a review of the act, and the government makes a decision about those that it wants to proceed with. The member can understand that the board, whose responsibility under paragraphs (a) and (b) is to monitor and make any recommendations for improvement, would be central to that discussion.

Mr Z.R.F. KIRKUP: This clause outlines the functions of the board, more broadly speaking, and there is nothing in this clause that prohibits board members from being asked to appear before a parliamentary committee hearing or to answer parliamentary questions that have been submitted to the Minister for Health. I imagine that the board has a level of accountability to the Parliament and nothing in these functions prohibits that from occurring; is that right?

Mr R.H. COOK: No. The board will absolutely be required to undertake those sorts of roles. Obviously, it will be prevented from disclosing personal information, but it will be subject to the whole suite of other acts that manage the public sector, such as the Public Sector Management Act and other parts of legislation that it will need to be aware of.

Mr Z.R.F. KIRKUP: I appreciate that. One thing that I am slightly concerned about is freedom of information and how "personal information" will be classed. Unless an applicant seeks their own information in an FOI application, personal information is often exempt. Because this is an intimate and private journey and procedure between a practitioner and patient, I wonder whether any FOI application will be caught under paragraph (c)(i)? In any case, that is something to be aware of. I was slightly concerned about how this would interfere with the provisions of the Freedom of Information Act 1992 and the subclause and schedule exemptions, but I appreciate that the board is still subject to other parliamentary oversight mechanisms.

Dr M.D. NAHAN: I refer to clause 117(a), which is to "monitor the operation of this Act". This is a very important role for the board. I will go through some scenarios. One of my concerns is that a number of regulators will oversee the people who are involved in this, particularly the practitioners; it is their board, and then we will have this. For instance, what will happen if SAT knocks back a case that involves a practitioner who repeatedly approves voluntary assisted dying and various processes? I am sure that SAT will have the power to inform the board of that and the board will have the power under paragraph (a) to monitor and identify that. What power will the board have to act on that if it finds that there has been sloppy behaviour or behaviour that is not illegal but because it is a decision of the practitioner it gets knocked back too often? What will happen if we see recurring behaviour of certain participants in the process?

Mr R.H. COOK: There may be reasons for the scenario that the member refers to. A practitioner may not have fulfilled their role as a practitioner under the national regulations law, in which case the board, potentially, would refer that to the Australian Health Practitioner Regulation Agency. Indeed, an individual, including a medical practitioner's colleague, could be concerned and refer it to AHPRA. The board could form the view that a particular proportion, or a number, have been overturned and refer that to the CEO, and say, "You need to have a look at the way the operation of the coordinating practitioners is going because we are now seeing an emerging pattern." It could be that a more serious breach of the voluntary assisted dying laws has emerged, in which case the board would refer that directly to the police. That should give the member an idea of the severity of the reasons to overturn decisions—I think the language is "set aside" the severity of that analysis.

Dr M.D. NAHAN: I am concerned about people such as Philip Nitschke who want to take the process in a direction that is not intended in this legislation. Those types of people do what they want. He is no longer a doctor and he can no longer operate, but those people exist. The board will have sufficient powers to monitor the decision-making of the VAD process and concentrate on it to identify both specific people and general trends. Will the board report these trends? Will it be required to report these trends to the minister or to the public in an annual report of some nature?

Mr R.H. COOK: Yes to all those questions—at least to the minister and, obviously, to the Parliament via the annual report. All that sort of analysis should be presented and made public.

Mrs A.K. HAYDEN: I want to go back to the line of questioning that the member for Cottesloe started on the cost of the board. The minister said that he has not yet determined that. Has the board been benchmarked against anything, such as the Victorian board? The board would know what it is paying the board members. Board members and support staff will need to be paid, but the minister said that he does not have a figure for that. Obviously the Victorian board would have worked that out, so will the minister use that benchmark?

Mr R.H. COOK: No.

Mrs A.K. HAYDEN: Can the minister let us know whether board members will be paid and how much that will cost? When legislation is drafted that involves a cost, I am sure the Treasurer would want to know what the cost will be to the state budget. As was determined earlier, the state government will be covering the bill for the cost of the substance and the administration of the substance, so there will obviously be a cost to the state budget. There will also be a board. I assume that board members and support staff will be paid, so that is another cost to the state budget. Was there a Treasury submission or did this go through the Expenditure Review Committee when the legislation was drafted?

Mr R.H. COOK: The government is captured by the Parliament. If Parliament passes laws, the government is required to provide funding for the functioning of those laws. If this legislation passes Parliament, the government will set the task of understanding the costs associated with it and move forward in that manner.

Mrs A.K. HAYDEN: Did this legislation go through Treasury? Was a Treasury submission provided before this legislation was brought to Parliament?

Mr R.H. COOK: I am informed that Treasury was consulted.

Mrs A.K. HAYDEN: Is the minister able to advise what Treasury was consulted about? Is there an estimated cost? If the minister consulted Treasury, there must have been a cost relevant to that. Is the minister able to share the Treasury submission or the conversations that were had with Treasury, and the cost?

Mr R.H. COOK: I have already answered that question. We are not doing the costings at this stage. We will see whether the law is passed. When any legislation is drawn up, it is appropriate that good consultation occurs right across government. However, at this stage, we have not gone into any analysis on the likely costs. Obviously, people have an understanding in the back of their minds in general terms about how much the obligations associated with any board are, such as whatever obligations they have under the Public Sector Management Act. At this stage, we have not undertaken any analysis of the overall costs. We are still waiting for Parliament to craft the legislation. Once Parliament has crafted the legislation, that will inform the government about the nature of the associated costs.

Dr M.D. NAHAN: Does the board have the powers to get involved—defined generally—in specific cases? If patient X starts the process, does the board have the power to act in the decision-making in specific cases?

Mr R.H. COOK: Obviously, if a matter that is considered to be of a criminal or dangerous nature is brought to the attention of any board member or by support staff to the board, they, like anyone, have a responsibility to refer it immediately to the appropriate authorities. Ordinarily, the board has a monitoring function, and in that sense it is about understanding the patterns or the nature of the way the legislation is operating, but clearly if they see something of a serious nature, they would act.

Dr M.D. NAHAN: I understand that the role of the board is to oversee and monitor the legislation, bed it down initially and then undertake an analysis of trends, but it also provides a collection point for information and

assessment. It might have to have an operational rather than just an oversight role, and I think that might be important. Can the board bring a case to the tribunal?

Mr R.H. COOK: The board has combinations of functions, and one of them is regulatory and referable. Under the regulatory function, it will monitor each individual case of voluntary assisted dying from the request stage to the completion stage so that each voluntary assisted dying case has proper oversight from start to finish. It will monitor the overall pattern of voluntary assisted dying deaths, maintain a database of all relevant statistics, conduct analysis and research, and monitor the exercise of any function or power under the legislation. In addition, it has a referral power, so it would not go to the State Administrative Tribunal; it would refer something directly to the chief executive officer or, as I said, in particularly severe cases, it would refer it to the police. In the context of what the member is saying about the SAT and the board wanting to intervene in a case, it would not do it in that matter; it would do it via the CEO of the Department of Health.

Mrs A.K. HAYDEN: I want to try to finish off my questioning on the cost. I know that the minister says he does not have the figure, but I would like to understand whether he has an estimate of cost but just does not want to share it prior to the passing of the legislation.

Mr R.H. COOK: This is the nature of government. The government waits to discover the nature of the legislation and then it would be subject to the normal Expenditure Review Committee processes. I think the member made reference to the Victorian board. The Victorian board is different from ours, so there would not be a comparative analysis. In the back of people's minds they might consider how senior this board is and that might provide them with a sense of how big it is. In the implementation phase, which is 18 months after the legislation might pass, it would be the responsibility of government to understand the nature of those costs, the number of staff that would be associated with it and things of that nature. This is simply the nature of government. We will wait to see what the legislation looks like and then the government will set to the task of understanding the costs associated with implementation. I assure the member that I am not seeking to keep anything from her. If it would expedite moving through clause 117, I would obviously provide the information. I assure the member that I am not trying to hide any information about that. It is just too early in the piece.

Ms M.M. QUIRK: I apologise for being late, minister, so if this question has already been asked and answered, do not hesitate to let me know. Under section 93 of the Victorian legislation, which relates to its board, there is, I think, a material difference in that one of the functions of the board is to provide reports to its houses of Parliament on the operations of the act and any recommendations for the improvement of voluntary assisted dying, whereas in the bill before us, the board is to provide information or advice to the minister or the CEO of its own initiative or on request. If this has not already been asked, I want to know why there is a difference. After the debate over the last couple of weeks, the minister will be well aware that there is significant interest in this matter, and I wonder why there is not direct reporting to Parliament.

Mr R.H. COOK: As the member would expect, and as she predicted, we have spent a bit of time on the reporting and accountability functions of the board. It is our intention that the sorts of issues that the member canvassed just then in relation to making sure the public is informed of the functions and oversight of the legislation would be included in the annual reporting.

Ms M.M. QUIRK: Matters may come up throughout the course of the year that might require more urgent attention by Parliament, and it seems to me that a conscious decision has been made to change the reporting basis in Western Australia from what is present in Victoria. I am really trying to drill down and find out what the basis of that decision was and why Parliament, which has some interest in the matter, is not able to have reports from time to time at the initiative of the board.

Mr R.H. COOK: The member made the observation that the Victorian board can report to Parliament, as will the Western Australian board via the annual report. There is no intention to stifle, and, as we have already discussed extensively this morning, there is ample opportunity for the Parliament to cross-examine the board at any point in time, and obviously through the committee process in particular.

Ms M.M. QUIRK: I have a last question on this, and it is probably a segue to the amendment I intend to move. Not having this mechanism is, again, a lack of real-time reporting, just as the board itself receiving information is not a real-time monitor. The minister used the word "oversight", but in fact the board will really be just a repository to make sure that the forms are filled in—there will be no clear oversight. I will not pursue the matter, because this is picked up in the amendment I intend to move.

Mrs L.M. HARVEY: Following the member for Girrawheen's inquiry, under the section on the functions of the board in the Victorian legislation, there are a couple of other facets, one of which is —

> to promote compliance with the requirements of this Act by the provision of information in respect of voluntary assisted dying to registered health practitioners and members of the community;

Other stated functions are —

> to promote continuous improvement in the quality and safety of voluntary assisted dying to those who exercise any function or power under this Act;
>
> …
>
> to consult and engage with any of the following persons and groups in relation to voluntary assisted dying —
>
> (i) the Victorian community;
>
> (ii) relevant groups or organisations
>
> (iii) government departments and agencies;
>
> (iv) registered health practitioners who provide voluntary assisted dying services;

I thought those functions would be important and useful for the board to assist it to proactively monitor the operation of the legislation, and to have a culture and, indeed, a purpose of continuous improvement, continuing consultation and continuing engagement with the community. I am curious to know why that was excluded from the functions and powers of the board in our legislation.

Mr R.H. COOK: It was not. Those functions are all functions of the board under clause 117(a) and (b). In that respect, we may have used language that is different from the Victorian legislation, but essentially the function is the same. The board has all the capabilities it needs for monitoring, researching and providing advice on the improvement of the voluntary assisted dying process. From that perspective, paragraphs (a) and (b) capture all the things the member described in relation to the functions of the board.

Mrs L.M. HARVEY: I accept that the minister says that clause 117(b) is a catch-all for all those functions, but the functions of the board are somewhat less specific than the functions of the board under the Victorian legislation. I suggest to the minister that our colleagues in the other place may well look to further define the functions of the board to make them more specific so that it is clear to the board that there is an expectation that there is a culture of continuous improvement. It is a function of the board to continually improve the legislation. It is a function of the board and indeed a requirement to continue with consultation. I seek the minister's advice on whether he would be amenable to amendments such as those if they were made in the other place. Would they be accepted by the minister should the legislation come back to this place amended in that manner?

Mr R.H. COOK: That would depend on the amendment.

Dr M.D. NAHAN: In debating this bill, we have highlighted a range of trends based on research that was done around the world on other legislation. Victoria's legislation is new so there is not much to do. I am sure that in framing this bill the government used research from other jurisdictions. The minister often talks about Oregon, but Canada is relevant too now. How does a layman or a parliamentarian such as me, who has an interest in finding out certain types of trends, input that to the board to see whether it can monitor it? I will give some examples. The nature of pain: is it existential pain? The Canadians have done research on this—I have read some data—and it is a relevant point. Another factor depends appropriately on a tight relationship between doctor and patient. That has been historically the case, but increasingly, particularly with the bulk-billing trends, that does not exist. The patient is known to the doctor largely from a database rather than through a personal relationship. If there are issues for people soon after the legislation comes in, how are we to inform the board other than through the minister, I suppose, that we think those things should be monitored and reported on to the public or to the other processes?

Mr R.H. COOK: The board is capable of responding to any sort of request in that context. Just to cap off on the comment the member made, the board would be more likely to talk about suffering than pain, but I understand what the member says: there is an issue there that someone wants to dig into. Ultimately, if it is a member of the public, they would be treated one way; if it is a university academic undertaking a study under the guidance of the university and the ethical processes, there might be a different approach. However, there is no reason the board cannot respond to community concerns about a range of issues and report back on those. Just like any other government board, the board would have an outward-facing profile as well as an inward-facing profile. There would be advice to government, but also expert advice to the community as well.

Clause put and passed.

New clause 117A —

Ms M.M. QUIRK: I move —

> Page 77, after line 18 — To insert the following new clause —
>
> **117A. Notice of no objection**
>
> (1) This section applies if a patient makes an administration decision.

(2) The coordinating practitioner for the patient must apply within two days to the Board for a notice (a ***notice of no objection***) under this section for the administration decision.

(3) The Board must give the coordinating practitioner a notice of no objection unless the Board considers there is a problem with what has occurred, including, for example —

(a) the patient has not acted voluntarily and without coercion; or

(b) the patient has been subject to abuse; or

(c) the patient has not been given adequate support in coming to the decision to access voluntary assisted dying; or

(d) a provision of this Act has not been complied with.

(4) If the Board refuses to give the coordinating practitioner a notice of no objection under subsection (3), the Board must give the coordinating practitioner a notice stating its refusal.

We have talked about this previously during the consideration in detail stage and I have foreshadowed it. This is basically to ensure that the monitoring and oversight of the board is in fact in real time. It effectively issues a notice of no objection to the process proceeding, given the information that has been mandated and needs to be provided to the board along the way. It is almost de facto to what happens in Victoria. As I have already talked at length on this issue, I will just say that this amendment clears up what I believe is an ambiguity in the role of the board and, in particular, the level of scrutiny and oversight.

Mr P.A. KATSAMBANIS: As the member for Girrawheen said in moving this amendment, the issues have been well canvassed. This would be a significant improvement to both the legislation and the regime that is being introduced to monitor the introduction of voluntary assisted dying. For the reasons I have outlined previously at the consideration in detail stage, I support this amendment.

Division

New clause put and a division taken, the Deputy Speaker (Ms L.L. Baker) casting her vote with the noes, with the following result —

Ayes (7)

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

Noes (41)

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

New clause thus negatived.

Clause 118 put and passed.

Clause 119: Delegation by Board —

Mr P.A. KATSAMBANIS: This clause will enable the board to delegate any power or duty of the board to either a member of the board or a committee that has been established under the board. I understand this is a relatively standard clause. However, under what circumstances would the board choose to delegate a power or a duty?

Mr R.H. COOK: The member is absolutely spot on. This is a simple standard clause. The delegation by the board is important, because it will enable continuation of service, particularly in circumstances in which the board may be administratively bound by the matters or needs to direct a particular duty to a member or to a committee that has the necessarily skill to address it.

Clause put and passed.

Clause 120: Staff and services —

Mr P.A. KATSAMBANIS: I am trying to get some clarity. This clause relates to staff and services. In debate on a previous clause, a similar question was asked about what the staffing will look like. My question is probably slightly different. I think the minister has already answered that the Department of Health is looking into that and is not quite sure what the staffing will look like, but some support services will need to be provided. Is it envisaged that the staff and services required for this regime and provided for under this clause will be provided under the existing resources that are allocated to the Department of Health, or will a separate budget appropriation be required to provide for the administration of this bill; and, if so, what will be the monetary amount on an annual basis, or will there be an establishment cost and an ongoing cost after that?

Mr R.H. COOK: As I am sure the member would suspect, this will be resolved in the implementation phase.

Mr P.A. KATSAMBANIS: If we will find out about that at some further time, how will the public be informed about that? Will the minister report to the house, and will there be a potential budget allocation that we can look at, or will we simply need to divine that through the myriad ways of extracting information from the executive government?

Mr R.H. COOK: I am sure the member will cross-examine me within an inch of my life in estimates —

Mr P.A. Katsambanis: I would not go that far!

Mr R.H. COOK: — which is the proper forum for examining the budget proposed by the government. In addition, there are questions on notice. There is a range of range of mechanisms, as the member would be aware, to make sure there is necessary oversight of the proper functioning of the Department of Health.

Clause put and passed.

Clause 121: Assistance —

Ms M.M. QUIRK: Clause 121 states —

> (1) The Board, with the Approval of the Minister, may co-opt any person with special knowledge or skills to assist the Board in a particular matter.
>
> (2) A person who has been co-opted to assist the Board may attend meetings of the Board and participate in its deliberations but cannot vote at a meeting of the Board.

I understand that the board will be serviced by members of the Department of Health, and that it will operate in a manner consistent with, say, the surrogacy board, which I think exists. Does the minister contemplate that there might be a need to co-opt under clause 121 if only a couple of staff have been allocated to servicing the board?

Mr R.H. COOK: I am advised that it is important that the board have access to the appropriate skills and expertise necessary to thoroughly review and monitor general and specific matters relating to voluntary assisted dying. This clause will ensure that even if there is insufficient expertise on the board for a particular matter or case, the board may bring in a person with the appropriate skill set to attain or analyse that information.

Ms M.M. QUIRK: It is contemplated that the staff who, effectively, provide executive support to the board, may be required under clause 121 to facilitate that co-option. I am asking: how many staff are contemplated being appointed under clause 120?

Mr R.H. COOK: Given that I think the member had some line of inquiry under clause 120 but missed the call for it, I will quickly respond. In my response, member for Darling Range and member for Hillarys, I repeat: we do not have line of sight into the necessary requirements for the board. That will depend upon the final package of legislation if it is passed. We will come to these issues in implementation. Clearly, the chief executive officer must provide all the support and resources reasonably necessary to enable the board to perform its functions.

Clause put and passed.

Clause 122: Minister may give directions —

Mr Z.R.F. KIRKUP: Will the directions referred to in clause 122(1) be published, as are other directions when the minister instructs an agency?

Mr R.H. COOK: I am advised that the text of any direction given must be included in the annual report. This will ensure transparency of any minister's direction. I add that the written directions clause does not enable the minister to give the board an unlawful direction. For example, any direction by a minister or other official to the board to hide or alter information other than that enabled under the bill, such as de-identification of persons involved in the voluntary assisted dying process, would constitute unlawful activity.

Dr M.D. NAHAN: I refer to clause 122(2), which provides that the minister cannot make a direction about the performance of a function in relation to a particular person or matter. I think I understand why it is "particular person" although I will raise that later. Why "matter"? A public interest issue might arise in a certain case that needs ministerial leadership or at least for the minister to be informed. Can the minister tell me what "matter" means and in what circumstances the board can inform the minister about a case that has valid public interest?

Mr R.H. COOK: This clause provides that the minister may give written directions to the Voluntary Assisted Dying Board on the performance of its functions, either generally or on a particular matter. The board must abide by these directions. However, the minister cannot direct the board in the performance of its functions concerning a particular person or a particular application or proceeding. If a patient is moving through the review process, the minister cannot write to the board and say that they want the board to intervene on a specific matter or a specific person. That is not the intent of this clause.

Ms M.M. QUIRK: Directions given by the minister to the Road Safety Council, for example, are tabled. Although the minister says those directions will be in the annual report, this is another example in which there is lack of topicality and, in real time, it is another mechanism of scrutiny by the Parliament that is effectively rendered ineffective because it may be up to 11 and a half months before the Parliament is made aware that a direction has been made. Was it contemplated to include a provision such as that covering directions to the Road Safety Council; and, if not, why not?

Mr R.H. COOK: I think the member is elevating what is simply a mechanistic clause to the level of skulduggery or subterfuge. This is simply an opportunity to make sure the government of the day has the potential to seek advice or provide a direction to the board in a manner that is consistent with usual government practice. It is not, as I said, an opportunity to interfere in a matter, but it is competent for legislation to contemplate a situation in which the minister would give the board a direction. It is consistent with, I would have thought, much of the common practice of government.

Clause put and passed.

Clause 123: Minister to have access to information

Mrs L.M. HARVEY: Clause 123(2) provides that the minister is entitled to have information in the possession of the board, but subclause (3) puts a caveat on it as follows —

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

I can understand a patient not having their identifying information disclosed to the minister. However, it appears to me to be a catch-all. Presumably, the minister can have access, for example, to the personal details of doctors involved in voluntary assisted dying—the practitioners and contact persons—without having to seek their permission for disclosure. Can the minister clarify that? I would have thought that the minister should not necessarily face a hurdle in finding out the personal details of a collection of doctors involved in making decisions about access to voluntary assisted dying. But I understand why protection is needed for patients. Can the minister clarify that?

Mr R.H. COOK: The intent here is for the minister to be able to request information from the board and that the board must comply with the request. However, the minister is not permitted access to information in a form that discloses the identity of the person involved in a voluntary assisted dying application or proceeding. The relevant language in this, member, is to have regard to the personal information about a person. It would not prevent the board from disclosing professional information about a medical practitioner or someone else involved in the process. It is the personal nature of the information. In my work as Minister for Health, I am entitled to a range of information but I am not entitled to patient records and things of that nature. I am allowed to receive a summary specifically relating to a person but I am not allowed to receive the person's personal information. It is to make sure that we protect those personal issues.

Mrs L.M. HARVEY: It would seem to me that it might have been more prudent, since the minister is not entitled to have personal information about a patient, unless the patient has consented to the disclosure of information. If a minister is carrying out due diligence, they would probably want to have readily available, without any hurdles, a list from the board of all the coordinating practitioners, consulting practitioners and other decision-makers in the voluntary assisted dying process. Because this clause is broad and refers only to a person, it seems to me that coordinating and consulting practitioners would be able to use it to not have their personal details disclosed to the minister. I see that as a loophole, if you like, for the minister not to be able to gain access to the details of the practitioners engaging in this process.

Mr R.H. COOK: It is not a loophole. It is not intended that the board would provide information of this nature to the minister. It may be, in the normal course of events, that the chief executive officer—with the oversight that the chief executive officer has over the entire system—from time to time provides briefings to the minister to allow the minister

to discharge their duty, but it is not the responsibility of the board in this particular instance. I understand the point the Leader of the Opposition is making. This is more about protecting the patient than a particular doctor, especially if that doctor is seen to be acting improperly. The proper mechanism for that would be to seek that information through the chief executive officer, with the oversight the chief executive officer has over the workforce. This is really to protect those people who do not come to the process as a professional but simply as a member of the public. I understand the point that the Leader of the Opposition is making, and I think it is a good one, but this is really about clarifying that it is not the role of the board to disclose information on the individual process to the minister. That would ordinarily be the responsibility, if considered necessary, of the chief executive officer, but not the board in this case.

Dr M.D. NAHAN: Just two minor things. Clause 123(3) refers to "unless the person has consented". What happens if the person has died? If the person has passed away, who is the guardian of that information on behalf of the person who has passed away?

Mr R.H. COOK: Clearly, they will not be getting the consent from the individual. I understand that the administrator of their estate has a role to play in that regard, but I am not familiar with the responsibilities of someone who is the administrator of an estate. I am informed that they potentially could provide permission for that information to be disclosed.

Dr M.D. NAHAN: That would maybe be an interesting thing for the member for Hillarys to talk about, because it could potentially —

Mr R.H. Cook: I'm not familiar with that particular issue.

Dr M.D. NAHAN: Yes, me neither.

Mr P.A. Katsambanis: I'm not going to talk about it today, but you can if you want!

Dr M.D. NAHAN: Okay!

Another issue is: are there any restrictions on the minister passing on the information he or she gets from the board? Sometimes ministers tend to do that, you know.

Mr R.H. COOK: Absolutely, member. There is absolutely a requirement on the minister to not disclose that information. The member is right: from time to time, a minister does pass on information, and they get into trouble.

Mrs L.M. HARVEY: I think the member for Riverton has a valid point. If a patient is deceased, they obviously cannot give permission for their details to be disclosed. Does the minister envisage, as part of this process, that there may well be on one of the many forms that are lodged with the Voluntary Assisted Dying Board an informed consent to allow disclosure of details in the interests of research et cetera? If the patient agrees to that as part of the process, it could certainly help with research efforts into voluntary assisted dying and who accesses it et cetera.

Mr R.H. COOK: That is a great point. I refer the Leader of the Opposition to clause 150, which I am just now becoming familiar with. As I think I have answered to the member for Dawesville on a number of occasions, the legislation sets out the information that must be in the forms, but it is not restrictive. Under clause 150(b), the board may, on request, disclose information obtained in the performance of its functions to a person or body for the purposes of education or research. That is something that we are grappling with at the moment. There is one school of thought that anyone who sets foot inside a public hospital to receive services should, almost by default, give consent for their de-identified information to be used for medical research for the good. I have some sympathy with that view. The law does not allow for that sort of thing, but I think it is a really interesting point that the Leader of the Opposition makes. We could envisage a situation in which a person who is ahead of the game, or even in the middle of the game, could say, "I'm happy, for the purposes of education, research and the betterment of humankind, for this information to be disclosed." That is a really important point and I think there will be more discussion about that right across the health sector.

Clause put and passed.

Clause 124: Membership of Board —

Mrs L.M. HARVEY: The board will consist of five members appointed by the minister. I seek some details from the minister about what sort of skill set would be sought in the people who are to make up the board. What sort of background would they need to have? Who are the sorts of people that we are looking for to sit on the board, and how will they be appointed? Will there be an expression of interest process? Will it be a transparent process of application for people to become members of the board? I just seek some information about how the minister is going to find these people, who they are, what their skill sets will be, and how they apply.

Mr R.H. COOK: This clause provides for five members of the board, as appointed by the Minister for Health. The bill gives the minister discretion to appoint people with the appropriate skill and expertise to carry out the functions of the board under the bill. It is intended that it will be a working board and not simply be composed of figureheads.

In appointing members of the board, the minister will endeavour to ensure that the board is composed of individuals who have special knowledge and experience in the areas that they will be required to deal with under this legislation—for example, a medical practitioner, a legal practitioner and a community representative. Western Australian health service boards are appointed by the Minister for Health. These boards reflect the skills and experience required to provide clinical and organisational governance and oversight across the health system, and there is no reason to apply a different approach to the Voluntary Assisted Dying Board.

As the Leader of the Opposition knows, I am responsible for appointing members to the boards of health service providers and myriad other boards across the health sector. I receive advice from the Department of Health about those whom the department considers competent to carry out those tasks, making sure that we have the appropriate blend of skills and experience. This board will be no different. Currently, the mechanism for people putting their name forward is a government portal called OnBoardWA. People provide their details for the sorts of boards that they are interested in serving on. There is no specific stipulation in that process because it is expected to follow the usual pattern of appointments to boards. I am advised that an ex-Chief Justice of the Supreme Court has been appointed as chair of the Voluntary Assisted Dying Review Board in Victoria. That is the sort of status and insight that we would expect of the people who will serve on the board.

Mr P.A. KATSAMBANIS: I do not have any question that the minister or any other minister —

The DEPUTY SPEAKER: Perhaps you should sit down then, member, if you have no questions!

Mr P.A. KATSAMBANIS: I do not have any question about the minister choosing appropriate people; it is just interesting that the acts that establish a number of boards, including some that the minister is responsible for, stipulate the types of skills, qualifications or experience that at least some members of the board ought to have. Sometimes there is a need to have someone with financial knowledge, legal knowledge or medical knowledge. Why was it not considered necessary that there be some stipulation in the establishing act of at least some of the core range of skills that ought to be covered—I would submit that things like having an understanding of psychiatric issues or palliative care issues would be extremely important—just to give some clarity about the type of people who will be eligible for appointment?

Mr R.H. COOK: As the member knows, the role of boards in government is an evolving or emerging phenomenon. When the Western Australian Health Promotion Foundation board was set up, it had to have one person from this entity, one person from that entity, two from there and so on. It was a very prescriptive and clunky mechanism.

Mrs L.M. Harvey: And irritating!

Mr R.H. COOK: Well observed, Leader of the Opposition! Roll forward to when the previous government revamped that legislation and it did away with all that, because that is not the modern nature. Also, when Hon Kim Hames brought in changes to the health act to put together the health service providers boards, a similar mechanism to this was adopted. It simply follows the pattern of modern legislation.

Clause put and passed.

Clause 125 put and passed.

Clause 126: Term of office —

Mr Z.R.F. KIRKUP: I understand that the term of office will not exceed three years. In my experience of appointment terms, that seems to be a relatively short term. I know that they will be eligible for a reappointment process. Is there any reason why three years was chosen and not a longer term, given the importance of the board?

Mr R.H. COOK: There is no great science behind it. Three years is considered an appropriate term of office, particularly as we will get an opportunity to see how they perform their functions in their first three years; and, at the end of that time, they would be reappointed or a replacement would be sought.

Mr Z.R.F. KIRKUP: I have two further questions. Will the board appointment process go to the Governor in Executive Council for their concurrence or ultimate agreement; and, if not, why not? Is there a cap on reappointments or will they continue to be rolled over forever?

Mr R.H. COOK: The answer to the member's first question is yes. The answer to his second is that reappointment will be determined by the Minister for Health based on the performance of the board member and, indeed, the needs of the board. We would not put a time limit on it. For instance, I am preparing to reappoint Professor Con Michael as chair of the Western Australian Board of the Medical Board of Australia, and Lord knows that he has been there for a lot longer than two or three terms. It is really about the performance of the board member.

Dr D.J. HONEY: Was any consideration given to staggering the appointments? I have looked at other bills in this place under which boards have been appointed and it has been stated that the appointments will be staggered so that there is not a complete generational change at the end of the three-year term.

Mr R.H. COOK: Yes, we would ordinarily expect them to be staggered. The member will note that the term is not to exceed three years. Ordinarily, we will appoint half for some of the time and half for the full time and make sure that there is that rolling consistency of knowledge and experience.

Clause put and passed.

Clause 127: Casual vacancies —

Mr Z.R.F. KIRKUP: Subclause (1) states —

> In this section —
>
> ***misconduct*** includes conduct that renders the member unfit to hold office as a member even though the conduct does not relate to a duty of the office.

I assume that that is misconduct as defined in the Public Sector Management Act or the Australian Crime Commission Act; would that be right?

Mr R.H. COOK: It is not inconsistent with those, but misconduct in this context is specifically defined in clause 127. The member is right; it is not limited to this legislation. It would apply to their responsibilities under the Public Sector Management Act and any other statutes that they would have responsibility under as a member of a government board.

Mr Z.R.F. KIRKUP: Given that it will be at the minister's discretion, I expect that that would largely be determined by how the minister of the day perceives misconduct might be construed under instructions or policies issued by the government of the day. If my reading of this clause is correct, misconduct will be determined by the minister; is that a fair assessment?

Mr R.H. COOK: Ultimately, the authority for removal rests with the minister, but that would ordinarily be on the advice of the chief executive officer and, more specifically, the Public Sector Commissioner, who has oversight of the conduct of all boards.

Mr Z.R.F. KIRKUP: Effectively, it will be no different from any of the obligations of other boards and their relationship with the Public Sector Commission.

Mr R.H. Cook: Yes

Mr Z.R.F. KIRKUP: Subclause (2)(b) refers to an individual who becomes bankrupt or insolvent. How will that be monitored in a practical sense? There will obviously be an obligation on the individual to inform whom—the minister? I would not expect the minister to be actively aware of the financial affairs of his board members at every point in time. How does the minister anticipate this being monitored—again, under normal public sector functions?

Mr R.H. COOK: Clause 127 is not unique to this legislation. This is a standard requirement for boards and board members. Ultimately, as I said, the Public Sector Commissioner has oversight of the conduct of boards and there are responsibilities for board members to report on matters pertinent to their capacity to perform their duties.

The DEPUTY SPEAKER: Go ahead, Dawesville.

Mr Z.R.F. KIRKUP: Thank you very much, Maylands! In relation to subclause (4)(a) —

The DEPUTY SPEAKER: I do not know that that is in the parliamentary spirit, but I will let you get away with it!

Mr Z.R.F. KIRKUP: We are reaching the end of a long week.

Mr R.H. Cook: Do you cease to be the member for Maylands when you are in the chair?

The DEPUTY SPEAKER: Not really. It is hard to wipe it out completely.

Mr Z.R.F. KIRKUP: I refer to clause 127(4)(a) and (b), which refer to neglect of duty, and misconduct or incompetence. I assume that these terms have been included to ensure that the minister has as wide a range of options as possible to get rid of a board member. Would that be correct?

Mr R.H. Cook: Yes.

Mr Z.R.F. KIRKUP: Subclause (4)(d) refers to missing three consecutive meetings as a ground for removal. Does that negate any leave that could be applied for by a board member?

Mr R.H. COOK: I think it states absence without leave.

Mr Z.R.F. KIRKUP: Yes; sorry. Under paragraph (d), how long can the member be on leave for? Is it just up to the satisfaction of the minister, in that case?

Mr R.H. COOK: These are standard clauses relating to the conduct of a government board. There is nothing unique and exciting about this.

Mr Z.R.F. Kirkup interjected.

Mr R.H. COOK: Fair enough; I understand the member is exercising his curiosity. If a board member has to take extended leave, ordinarily they would seek leave from the chair. If it is an unusual circumstance, the chair might seek guidance from the Public Sector Commissioner or, indeed, provide notice to the minister. These things are managed within the confines of that process.

Mrs L.M. HARVEY: Clause 127(3) states —

> A member may at any time resign from office by written notice given to the Minister.

There is an opportunity, I guess, by way of discussion, if the minister is not happy with a member of the board, and the board member does not fit with the provisions of subclause (4), which are really about neglect, incompetence or incapacity, or simply not performing their duties. Having been a minister and having inherited some boards, I know that there are occasional personality clashes with individuals on boards that may make the relationship unworkable, and a particularly recalcitrant member of a board may not want to assist the minister by resigning. I am wondering whether any consideration was given to including an option for the minister to remove a member of the board as they see fit, if you like, to ensure that the minister can have a good working relationship with members of the board.

Mr R.H. COOK: As the member knows, the relationship between any board member and the minister can often be a matter of some complexity. If a board member is doing a good job as a board member, and discharging their responsibilities, and the minister finds that person a bit objectionable, I guess we place a restriction on the minister's powers for good reason. This clause exists simply because the minister appoints the board members, and board members must resign to the minister. I remember receiving a letter from my father once saying, "Dear minister, I hereby resign from the Mental Health Review Tribunal." From that perspective, it simply provides clarity about how the member would execute that task. There are limitations, I guess, on what ministers can do, but the member knows the ways and means of the Public Sector Commissioner and a good board chair. These processes are often nuanced, and this is obviously the bog-standard approach to the powers and constructs of a board.

Clause put and passed.

Clause 128 put and passed.

Clause 129: Alternate members —

Ms M.M. QUIRK: Minister, the grammar police have arrived. I note that the heading of this clause refers to alternate members. I gather from the sense of the clause that what is in fact meant is alternative members. For the purposes of *Hansard*, this is often a mistake, but "alternate" means to happen or exist one after the other repeatedly, whereas "alternative" means a substitute. I have not actually drafted an amendment, the minister will be very pleased to know, but this may well be something that needs to be looked at in the other place. Although it is in the clause itself, the heading is almost an editorial decision by parliamentary counsel. Can I confirm that what the minister actually means is "substitute"?

Mr R.H. COOK: The member is quite right. This clause is to allow a member to step in. I am provided with robust advice that "alternate" is the correct term to use. I am happy to go away and do some research on that, but I am pretty confident that this is consistent wording and practice in Western Australia.

Ms M.M. QUIRK: It is certainly used by Main Roads, and I forgive it, because I have surmised that there is not enough room on signs for "alternative" as opposed to "alternate", but in this case we are not swapping backwards and forwards, we are putting somebody else in to replace them. I will provide for the minister's advisers a copy of a paper titled "44 Common Confusions to Annoy the Grammar Police", which may assist.

Clause put and passed.

Clauses 130 and 131 put and passed.

Clause 132: Quorum —

Mrs L.M. HARVEY: I seek clarification from the minister. This clause states —

> A quorum for a meeting of the Board is 3 members of the Board.

But further on in this division there is a provision that if members disclose a personal interest, they need to excuse themselves, and they may be declared ineligible to participate in meetings under clause 141. Then, under clause 142, if a member is disqualified under clause 140 in relation to a matter, the quorum is actually two members. I seek

a bit of clarification on this matter. It seems to me that, if there are five members of a board, it would be a highly unusual circumstance for three members to be unable to vote on a matter. I query why we have this option to allow a meeting to convene with only two members present, as a quorum.

Mr R.H. COOK: I am advised that this covers a highly exceptional circumstance that would be very rare indeed. It is simply a standard mechanism to make sure that the board can continue to function. For instance, I think the Environmental Protection Authority dealt with some issues some years ago with respect to Rio Tinto. Because of the nature of Rio Tinto, a number of the members of the board had to excuse themselves, and they got very thin on the ground. This is simply a mechanism that would allow the board to continue to undertake its function and make sure that it does not become paralysed.

Mrs L.M. HARVEY: Therein lies the issue that I would like to raise: when a number of members are disqualified or unable to vote, would it not seem more appropriate, rather than reducing the quorum from three to two, to substitute a member of the board for the purposes of the board's deliberations? Would that not head off issues that could arise, similar to those matters that arose in that Environmental Protection Authority decision, which ended up being made by, I think, a committee of one?

Mr R.H. COOK: This is a common and standard approach to maintain the functions of the board. The member would understand that this would arise when a board of three members is dealing with matters, as it usually would, and a board member has a conflict of interest. That member would step out—that is so the board would not lose its quorum. I understand the point the member makes, but this is stuff that government boards and governments generally seek to avoid. It is simply there to make sure that the circumstance in which a board cannot function does not arise, because there are three members sitting in a room deliberating, and one has to excuse themselves. It is there to make sure that the board can continue to function. I accept the premise of the member's argument—it is not the best approach and in terms of competent management of government we would seek to avoid it ordinarily.

Clause put and passed.

Clauses 133 to 135 put and passed.

Clause 136: Holding meetings remotely —

Mrs L.M. HARVEY: Clause 136 relates to the composition of the board. Does the minister envisage that there will be regionally based members on the board who will be able to participate in meetings via video link or via whatever other way that modern technology allows?

Mr R.H. COOK: Absolutely; we could also envisage a situation in which a board member is in Sydney for the day. This will not stop them from participating in a board meeting.

Clause put and passed.

Clause 137 put and passed.

Clause 138: Minutes —

Mr Z.R.F. KIRKUP: The minister would appreciate that I would not ask questions that could be dealt with in a normal setting, but I want to satisfy myself about the publication of minutes. Does the minister anticipate that the minutes will be published and made publicly available? Does that usually happen in other circumstances?

Mr R.H. COOK: No; the minutes would ordinarily not be made available as they are by other boards. I wonder whether they will be subject to FOI—I am not sure. If they were, personal information would not be publishable. But, as the member says, this is what occurs in the normal course of a board's life.

Ms M.M. QUIRK: The issue about disclosing the minute relates to patient privacy and this will be part of the implementation phase. I accept that the minister may not be able to answer this question at this stage, but is it likely that instead of using names, some sort of convention such as numerical identification will be used? Will that be problematic given that a patient's name will appear on all the paperwork?

Mr R.H. COOK: The member is right: this stuff will be worked out administratively. I think it would be more likely that if the minutes of a meeting were FOI-ed, the information would be redacted rather than relying on a numerical or some other de-identification system.

Clause put and passed.

Clause 139: Disclosure of material personal interest —

Mrs A.K. HAYDEN: Clause 139(1) states that a member of the board who has a material personal interest has to declare that beforehand, and if they do not, there is a penalty of up to $10 000. Can the minister explain what a "material personal interest" is?

Mr R.H. COOK: Again, this is a standard provision for WA boards. A material personal interest is one that is personal to the member and not to the general public, nor an interest of another person. The interest must be material—that is, not trivial.

Ms M.M. QUIRK: It appears that so long as a person declares an interest, they will not be precluded from sitting on the board. The example I can think of is maybe a medical practitioner who is in a practice with a partner who in fact is a coordinating medical practitioner, or what have you, or is in a practice that promotes their services in this regard. As I said, the important thing is disclosure, rather than prohibiting that person from sitting on the board. That is certainly the minister's understanding. There may be some interest above and beyond the interests of a normal member of the public, but a person is not precluded from sitting on the board so long as disclosure is made.

Mr R.H. COOK: The matters relating to disclosure of material personal interest are further expanded in clauses 140 and 141. Again, these are unremarkable clauses that deal with the usual processes of a government board. I also stress that a board member is subject to all the provisions of the Public Sector Management Act and other obligations under good governance.

Mrs A.K. HAYDEN: I note that when the minister sometimes gives his answer, he reads them out, which is fine; I understand that there is a lot of detail to get across. But the fact is I am asking a question about a material personal interest because there is a fine attached to it if that is not disclosed. I do not appreciate the minister being dismissive and suggesting that we should know that because it is common knowledge. It may be common knowledge to the minister, but, as I said, the minister is reading out his answers, so it cannot be that common. I point out that this is a debate for the whole Western Australian community so that they can understand what everything means. When we have asked some questions, we have got some eyeball rolls, suggesting that they are silly questions. But I want examples from the minister about what a material personal interest is.

Ms A. Sanderson interjected.

Mrs A.K. HAYDEN: See—getting eyeball rolls from backbench members is not helpful. This is a debate so that the person on the street in Western Australia can read this and understand it at any time. They should not be expected to know about the standard roles of board members and the like. All I ask for is a little bit of flexibility. We are nearly finished, members.

The DEPUTY SPEAKER: Member, just pop the question you want.

Mrs A.K. HAYDEN: As we go into further clauses, could the minister at the table, and not the backbench, give an answer and provide an example of what a board member will be able or unable to vote on?

Mr R.H. COOK: Member, I would not worry about the eyeball rolling that goes on around the place. There are much worse things that take place in the Parliament—'tis the nature of the Legislative Assembly. We need to make sure that we are immune to those sorts of things. I am saying that these clauses are unremarkable in that they are the standard provisions that relate to a board member. A material interest, for instance, may be related to a person under a matter of consideration.

That would be a material interest. The board might be considering a financial transaction that the person has some relation to. That would be a material interest. From that perspective, the conventions and rules around these things are well known in the context of the Public Sector Management Act. When someone becomes a member of the government board, they get their induction and it is made sure they are made aware of their obligations under the legislation.

Clause put and passed.

Clauses 140 and 141 put and passed.

Clause 142: Quorum where s. 140 applies —

Dr D.J. HONEY: I was just looking at the quorum. I was concerned that a quorum is two people. I would have thought that it would be prudent to make the quorum at least a majority of the board. I understand that there are five members on the board, but with a quorum of only two, matters may be considered, passed and acted on when not even a majority of the members of the board is present at the meeting. I wonder whether the minister could tell me why the number required to make a quorum is so low and why at least a majority of the board should not be required to make or vote on a decision, and not two people. Why would that minimum quorum not be three people?

Mr R.H. COOK: As they say in the classics, there are no prizes for second, and I am afraid the Leader of the Opposition has already beaten the member to the punch on this issue. I apologise if the member was not here when we discussed clause 132, but there was a fairly extensive discussion about those special circumstances in relation to this. To summarise the discussion, this is essentially for when there are three people in the room and for a particular matter a member has to excuse themselves. It is just so the board can continue to operate for the

purposes of that matter. Obviously, in the ordinary matter of events the board would be managed in such a way that this does not occur, but this is simply a stopgap measure to make sure the board could continue to deliberate.

Clause put and passed.

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

Ms M.M. QUIRK: I do not know whether this is a standard clause or not. It seems quite strange to me. It states that the minister may declare sections 140 and 142 inapplicable. That relates to voting by an interested member and a quorum when there is voting by the member. The explanatory memorandum says —

> This clause enables the Minister to declare, in writing, that either or both clause 140 (voting by interested member) and clause 142 (quorum where section 140 applies) do not apply to a specified matter, generally or in voting on particular resolutions. The declaration must be laid before each House of Parliament within 14 sitting days after it was made.

I have a couple of questions. The first is: can the minister explain why this clause is necessary? The second is: why is it considered appropriate to table such a declaration in each house of Parliament when for other matters that we have asked to be tabled in Parliament it was not considered appropriate to do so?

Mr R.H. COOK: My understanding is that this is a standard clause and is consistent with WA practice and administrative necessity. The reason the minister's declaration must be laid before each house of Parliament within 14 days is that the minister has come to a view that perhaps a potential material interest is not a material interest, but it is appropriate that there is some transparency about that. It is consistent with WA practice and is essential to good governance.

Ms M.M. QUIRK: I understand that this might be a standard clause for a busy board that meets frequently. I know this will be considered in the implementation phase, but how often is it contemplated that the board will meet? Is this really necessary? Is it not possible to undertake these meetings more on phone lines so that a quorum could be insured without problematical members needing to participate? I think it is an interesting clause, given that we may be talking about half a dozen, if that, meetings a year, if the predictions of the number of people who will avail themselves of voluntary assisted dying are accurate.

Mr R.H. COOK: Again, this is standard architecture for legislation that contemplates a board to oversee its functions. On the question of how often it would meet, I refer the member to clause 131, which says "must be held at times and places determined by the Board". It is to be discovered to what extent the board will meet to discharge its duties. As the member says, these matters would be resolved in the implementation phase. Having these provisions in the legislation is the standard architecture we expect in this sort of legislation overseen by a board in order to make sure it can discharge its functions.

Clause put and passed.

Clause 144: Establishment of committees —

Mr Z.R.F. KIRKUP: I refer to subclause (1). This might be a regular thing, and if so, I appreciate that is the case and apologise in advance. What other committees would be established to assist the board? Does the minister have an understanding of what that might look like so that he can provide me a bit more exposure of what that would usually mean?

Mr R.H. COOK: Yes, again, it is standard for a government board to have the authority to establish committees. For instance, the health service provider boards have a risk and audit committee, which is a standard element of the work they do. This simply makes sure the board has the authority to undertake these tasks.

Mrs L.M. HARVEY: Further to this, subclause (3)(b) says that the board may appoint any members of the board or other persons as it thinks fit to be members of a committee. Presumably, members of a committee would be entitled to remuneration. I seek clarification from the minister whether a board member appointed to a committee would be doubly remunerated.

Mr R.H. COOK: No, they certainly cannot double dip. Remuneration is covered under clause 130, which essentially states that I would act on the recommendation of the Public Sector Commissioner on remuneration of all board members. One example is that a person cannot be paid to be a public servant and paid to be a board member at the same time. Those sorts of issues would apply. They are again administrative matters.

Mrs A.K. HAYDEN: Under clause 144(3), does the minister have oversight of or input into the appointment of any members of the board or other persons?

Mr R.H. COOK: No, member.

Mr P.A. KATSAMBANIS: Clause 116 confers a status on the board that it is an agent of the Crown and has the status, immunities and privileges of the Crown. Will the committees have exactly the same status, immunities and privileges under this clause?

Mr R.H. COOK: I have received some comprehensive advice on this question—no.

Clause put and passed.

Clause 145: Directions to committee —

Mr Z.R.F. KIRKUP: Will the directions that the board gives to a committee be published in any way? If not, could that be accessed through the FOI process or parliamentary questions?

Mr R.H. COOK: It would not ordinarily be reported to the Parliament. It is essentially the internal functions of the board that we are considering here. The directions would form part of the minutes, so technically one could FOI the minutes. This clause is essentially to make sure that the committee is a beast of the board and that the board maintains control of the functions of the committee at all times.

Mr Z.R.F. KIRKUP: Given the directions from the board to the committee, would the board have to report the establishment of those committees in its annual report? I am conscious that a situation might exist across the health system, as I have found, where all types of boards and functions might be established that we do not know about until we delve quite deeply into it. Is there a way for the board to publish that it has created different committees to look at certain areas? If so, what mechanism would that take?

Mr R.H. COOK: That would be a function of its annual report. It certainly would report that sort of information in its annual report.

Mr Z.R.F. KIRKUP: The minister mentioned the risk and audit committee, for example. Could it be envisaged that if a particular issue were found with the monitoring of the act, the board would establish a committee specifically to look at that particular function? I imagine that would not be case specific but specific to a particular function or area of the act; is that correct?

Mr R.H. COOK: That is entirely a matter for the board. It might want to inquire into a particular issue and so it will send the committee off to have a look at that matter.

Mr P.A. KATSAMBANIS: Under clause 145, the board can give directions to the committee. Can the minister utilise the power under clause 122 to give directions to the committee if it is effectively a beast of the board? Could the minister issue similar directions utilising the powers in clause 122?

Mr R.H. COOK: It is not intended that that is the case, although technically, as the member observed, the minister can make a direction to the board. The board would then potentially execute that through the committee. The committee is a function of the board. From that perspective, the chain of command is through the board rather than directly between the minister and the committee.

Mr P.A. KATSAMBANIS: That helpfully answered my next question: could any minister direct the board and then pass it on to the committee?

Mrs A.K. HAYDEN: I apologise if the minister included this in his answer; I may have missed it: does the minister have any oversight of this?

Mr R.H. COOK: Only through the board, member. This is a subcommittee of the board as such. Going back, for instance, to the risk and audit committees of the health service provider boards, I do not have a relationship with those subcommittees; I have a relationship with the board through the chair.

Mrs A.K. HAYDEN: Just to clarify: if they give directions to the committee, is there no need for them to advise the minister of those directions? Will the minister just read it in the annual report?

Mr R.H. COOK: Yes.

Clause put and passed.

Clause 146 put and passed.

Clause 147: Remuneration of committee members —

Mr Z.R.F. KIRKUP: I presume this clause relates to the remuneration of committee members rather than board members. Can the minister give me an example of other committee members, a comparative board, to which this would apply? I imagine that a number in Health would be equivalent. I am keen to understand how much they

would be paid or what that function looks like. I appreciate that that information might be difficult to provide on the fly. Perhaps the minister could provide an understanding of that later.

Mr R.H. COOK: Yes, I certainly cannot tell the member what they will be paid. Ultimately, that is something that is done on the recommendation of the Public Sector Commissioner, who takes a range of issues into account in terms of the nature of the committee, what it is advising on, and the status—for want of a better description—as in the skills and experience of the people who will be on that committee. I envisage that the board might want to have a committee that has a clinical aspect to it; for instance, to advise the board from time to time in relation to those things. That could potentially be one of those things. Ultimately, these matters are decided by the Public Sector Commissioner, who makes a determination on the appropriate remuneration. I remind members of my earlier comment that public servants do not get renumerated on a board anyway.

Mr Z.R.F. KIRKUP: I appreciate that the recommendation comes from the PSC to the minister; is that right?

Mr R.H. Cook: Yes.

Mr Z.R.F. KIRKUP: There is no requirement for a committee member in this case. They are not appointed through Executive Council or anything like that; they are just a sub-function of the board; is that right?

Mr R.H. Cook: Yes.

Mr P.A. KATSAMBANIS: I seek the minister's view of how this might operate in practice. There will be committee members and there will be a determination. Usually a different annual fee is payable to a chairperson and a deputy chairperson to reflect their roles. Permanent members or members appointed get a different fee again. Often committee members end up getting sessional fees.

Mr R.H. Cook: Yes, that is right.

Mr P.A. KATSAMBANIS: If there were a situation in which a member or members of the board were sitting on the committee who were already paid their annual fee, and sessional members were entitled to a fee, would the board member sitting on the committee ordinarily also be entitled to the sitting fee or sessional fee in addition to the board fee payment, or would it be expected that they sit on those committees without additional payment?

Mr R.H. COOK: I addressed this in answer to an earlier question from the Leader of the Opposition—no, people cannot double dip. To clarify, if a board member receives a standard remuneration, they cannot then pick up a sessional fee on top of that. These things are decided by the Public Sector Commission and are done in a way that limits the capacity of a member to be inappropriately remunerated.

Mr P.A. KATSAMBANIS: I was asking only for clarification. I am not sure whether it is appropriate or inappropriate. I can imagine circumstances in which it might actually be appropriate when board members are recompensed an annual fee on the understanding that they will need to spend X amount of time as board members. If they are co-opted to other committees, that may be additional time. I was seeking clarification on that. I am not wedded to one side or the other.

Mr R.H. COOK: It is all about the Public Sector Commissioner and the way in which, in this case, she manages these things.

Clause put and passed.

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

Mr Z.R.F. KIRKUP: The preamble to clause 148 states that the board must send information to the contact person for the patient. Will there be a prescribed format for how that information will need to be sent? I know it sounds a bit ridiculous, but I am conscious of the distance and the nature of what we are trying to achieve. Will the information need to be provided in a prescribed manner?

Mr R.H. COOK: No, there is not a prescribed manner, but obviously it would depend on the circumstances of the person to whom the information is sent. I refer to the issues raised by the member for Girrawheen about the person's cultural background and things like that. There might be different forms in which that information would be held.

Mr Z.R.F. KIRKUP: I appreciate that, minister. We have spoken a lot about the role of the portal, particularly in the entering of information and the recording and monitoring of that information through the board. Does the minister imagine that in this case, the contact person might also have some involvement with the portal? Is that a possibility? Given that the patient will have to send the information to the contact person, will the contact person also have the ability to interact with the portal, or will it have to be done by email or phone? How will the contact person be provided with the information?

Mr R.H. COOK: No, I would not think that the contact person would have interaction with the portal. The onus will be on the board to ensure that the information is received by the contact person. Therefore, from that point of view, we could not make reference to the portal and assume that the contact person had accessed it. We would need to make sure that the information was received by the contact person in that context. I guess that the contact person in that respect would be supported in the role they play, whereas a coordinating practitioner, for instance, would have received the mandatory training and would have a level of expertise and would themselves be accessing the service. Therefore, from that point of view, the portal would be supporting that person to undertake their role. This is about making sure the contact person has the information in their hot little hands and is supported in the process.

Mr Z.R.F. KIRKUP: I appreciate that, minister. The reason I am interested in clause 148 is that it provides that the board needs to satisfy itself that the contact person has been made aware of their responsibilities. Last night, we had a conversation about the possibility that the contact person was not aware that the patient was deceased, for example, because they had not been in regular contact. I imagine that this clause will enable the board to ensure that the contact person is expressly aware of their obligations. I appreciate that the contact person may not be involved with the portal. My only reflection on the portal is that it could provide an acknowledgment that the contact person had read and accepted—like terms and conditions—each particular element. If the board were to just provide the contact person with a range of material, there would not necessarily be any way in which it could satisfy itself that that had been done, depending on the way in which the information had been sent, which is the reason that I asked whether the contact person could be involved. Perhaps during the implementation phase of this bill, the clinical expert panel could look at whether it would be possible to provide a portal that the contact person could look at. That could be quite relevant. The information could easily be translated, according to the person's linguistic background, and, if the person was in a remote setting, it could be sent through the internet. Similarly, it would enable the board to satisfy itself that the checks were in place and that the contact person had identified that they had read and understood their obligations and things like that. As the minister rightly pointed out, this clause places a lot of obligations on the contact person. The contact person will also have an obligation to be aware of the disposal site. Therefore, it might also be relevant to look at providing a portal into which the contact person's address could be inputted and they could be directed to the nearest disposal site. We are trying to remove any friction points. Therefore, it might be worth the expert clinical panel looking at a portal as part of the transition phase.

The ACTING SPEAKER (Ms J.M. Freeman): I will take that as a comment.

Mr S.K. L'ESTRANGE: The minister will recall that during the debate on clauses 64 to 66, he made the point that the contact person will not need to be present when the patient decides to self-administer, for example. I assume that the board might not know whether that is the case. What information will the board provide to the contact person?

Mr R.H. COOK: Clause 148 provides that the board must, within two business days after receiving a copy of a contact person appointment form for the patient, send information to the contact person that explains the requirements under clause 104, and make sure that they understand their role and the information as set out in paragraph (b). It also outlines the support services that would assist the contact person to comply with the requirements of the bill. This is about ensuring that when the contact person is appointed, they are provided with a list of approved disposers, as the member for Dawesville observed. Furthermore, this information would be publicly available, so they would be able to refer back to it. It is simply about making sure that the intent of the law is that the board supports the contact person in understanding their role and carrying out that role.

Mr S.K. L'ESTRANGE: The minister referred to clause 104. We know that the contact person will be required to give any unused or remaining substance to an authorised disposer within 14 days after the day on which the patient has died. In the debate on clauses 66 and 67, the minister highlighted that the contact person will not need to be there at the time the patient dies. Will the board provide information to the contact person about how to gain access to the premises, which will obviously involve legal aspects, and about how to collect any unused or remaining prescribed substance? Will there be any instruction on how that might occur?

Mr R.H. COOK: This will obviously be subject to extensive focus in the implementation phase. The member would understand that the board would provide information to the contact person to say, "Speak to the patient about the circumstances in which they are going to self-administer; and, if you are not going to be around at the time, make sure that you have made arrangements so that you can carry out your functions with regard to any unused portions of the voluntary assisted dying substance." It is about assisting the contact person to anticipate what they will need to do to successfully carry out their functions. It reflects the point raised by the member for Dawesville about how we will know whether the contact person has all the information they need. Under clause 65(1)(e), the contact person will be required to make a statement to the effect that they understand their role so that everyone will be satisfied that the information has been communicated appropriately.

Mr S.K. L'ESTRANGE: Clause 65(1)(e) is important. One of the concerns that we raised during the debate on that clause is that the only qualification for the contact person is that they be 18 years of age or over. Let us say the board has made the statement under clause 65(1)(e) that the contact person understands their role. However,

if during the course of preparing for the patient's death the board came to the conclusion, or the opinion, whatever it might be, that the contact person was not competent or capable of understanding their role properly in this circumstance and to carry out their functions, could the board relieve that contact person of their duties?

Mr R.H. COOK: Ordinarily, we would anticipate that the board might raise concerns with the coordinating practitioner about whether the contact person is capable of carrying out these functions. If the contact person is an adult and has made a declaration to that effect, that is their right. Of course, the board is there to make sure, within its powers, that the law functions properly, so it would undertake whatever activities it felt necessary to satisfy itself in that circumstance.

Mr S.K. L'ESTRANGE: I think we are getting to the point of considering a situation in which the board is of the opinion that some of the key authorised activities of the contact person might be at risk. For example, we know that under clause 66(1), the contact person is authorised to receive the prescribed substance, supply the prescribed substance and give the prescribed substance, or any unused or remaining prescribed substance, to an authorised disposer. It is a pretty serious role. Even after talking to the coordinating practitioner or the patient themselves, the board may say, "We think this contact person is a key person for you; they need to be present and involved with you but they simply do not understand." The contact person might not have a good grasp of English, for example. There might be an issue around reading the instructions about the process. If the board determines they are not in a fit state to carry out the role, can the board step in and say, "We're happy for this contact person to stay with you, but you need to consider appointing a new contact person who will be able to fulfil these duties properly"?

Mr R.H. COOK: We are starting to dig into the minutiae of this process. Under clause 148, the board will have the responsibility to make sure the contact person understands their roles and responsibilities. The requirement for the board to follow up with the contact person and remind them to return the substance in time is another safeguard in the bill to ensure that a voluntary assisted dying substance is used only for the patient for whom it is prescribed. We could contemplate any range of situations. From that perspective, we assume that an adult who makes a declaration in the context of this has the appropriate capacity to carry out their functions. They will have made a declaration to that effect and have been contacted. The board could ordinarily contact the coordinating practitioner and make suggestions about the way it operates. I think we have the necessary safeguards there. Obviously, a range of things could or might take place, but, ultimately, this provision will make sure the contact person has the information they need and is declared as such to carry out their functions.

Mr S.K. L'ESTRANGE: The minister has not answered the question. The question is a simple one: if the board thinks the contact person is not capable of carrying out their role, can the board intervene to see whether a new contact person is appointed? It is a simple question.

Mr R.H. COOK: The board could talk to the contact person; it could contact the coordinating practitioner; it could contact the patient and have a discussion about these things. Under the legislation, it does not have the power specifically to bar someone from being a contact person.

Mr S.K. L'ESTRANGE: What support services will be available to assist the contact person to comply with the requirements referred to in clause 148(a)?

Mr R.H. COOK: That will be provided for in the implementation phase. The member will understand that it will be reviewed and updated as experience provides.

Mr S.K. L'ESTRANGE: Can the board delegate this function to a committee under clause 144?

Mr R.H. COOK: No. The board is ultimately responsible for its own powers. It may choose to use the committee to undertake particular activities, but, ultimately, this will come down to the responsibilities of the board to ensure they take place. Ordinarily, it would be managed by the secretariat and the Department of Health for the day-to-day functions of these things. It is the responsibility of the board to ensure it takes place.

Ms M.M. QUIRK: I think clause 148 contemplates that the patient will undertake self-administration within a relatively short time; hence the instructions being sent immediately to the contact person. It may well be that the person who wants to self-administer does not do so immediately; in fact, it may be some time after the contact person has been appointed. The contact person might shove the letter in their drawer or whatever and not necessarily take a lot of cognisance of it at the time the material is sent, or the contact person might take cognisance of it and then forget the requirements by the time the patient ultimately gets around to self-administration. Under the Victorian legislation, the board is required to be notified seven days after death. In my view, that is probably a bit better because the whole circumstance of the matter will be fresh in the contact person's mind—they will have the instructions in front of them and will see what they have to do. I think the difficulty with clause 148 is that it has the assumption that there will be a temporal connection between when the board notifies the contact person of their obligations and when the death occurs. I make that as an observation. I would be pleased to have the minister's comments. Does there need to be some acknowledgement of receipt by the contact person? How will we know that these requirements have been sent out and received?

Mr R.H. COOK: This sets out the very barest legal requirements for the board. Ordinarily, we would expect the board to liaise with the contact person. If it receives information suggesting that the patient has passed away, someone would pick up the phone and speak to the contact person to remind them. Clause 65(1)(e) provides that the contact person must make a statement indicating they understand their role. The bill sets out the bare minimum to make sure the system works. But to make sure the system works very well, a range of other informal processes will assist.

Clause put and passed.

Clause 149: Request for information —

Mrs A.K. HAYDEN: Clause 149(2) states —

> A person may comply with a request under subsection (1) despite any enactment that prohibits or restricts the disclosure of the information.

The explanatory memorandum states that the provision does not provide power to compel someone to provide that information. Is there any other person or body that can compel someone under this provision?

Mr R.H. COOK: Yes, member. Western Australia Police Force and the courts can compel someone under this provision.

Mrs A.K. HAYDEN: Is the board able to delegate this part of the function to the committee?

Mr R.H. COOK: No, member.

Mrs A.K. HAYDEN: Just one final one. The board cannot pass information on to the committee. It can request the information, but it cannot compel. As the minister said, it can send the request on to a police officer if it wants to get that information, but it cannot compel. The minister is saying that other authorities can. Can the board make that request to the authority that can compel?

Mr R.H. COOK: Does the member mean the committee of the board?

Mrs A.K. Hayden: The committee, sorry.

Mr R.H. COOK: The committee of the board is a function of the board. It is like any other subcommittee that is established. P&Cs have fundraising subcommittees, for example. It is not a separate entity; it is part of the board. If the board feels there is information that should be forwarded to the police for investigation, it obviously has the power to do that.

Ms M.M. QUIRK: I move —

> Page 86, after line 21 — To insert —
>
> (1A) A person must comply with a request under subsection (1) within the time, and in the manner, required by the Board.
>
> Penalty for this subsection: a fine of $10 000.

I have two amendments to this clause on page 9 of the notice paper. I have to say that I have reflected on whether or not I should move this amendment because the contact person is, after all, being a good egg in agreeing to put themselves forward and giving their name and address to act as the contact person. . Under clause 149 as it stands, the board may request any person, including the contact person for a patient, to give information to the board to assist it in performing any of its functions. A person may comply with a request despite any enactment that prohibits or restricts the disclosure of the information. The amendment is actually about noncompliance with the provision of information. I think that is consistent with other parts of the legislation. There may well be good reasons why it is not considered appropriate to have any sanctions for noncompliance. I appreciate that it could, for example, include a patient, and we do not necessarily want to penalise the patient, but I would have thought that a recalcitrant contact person should be subject to a fine.

I am not going to have a vote on this; I just make the comment. My second amendment on the notice paper relates to line 22. Why does subclause (2) use the word "may" rather than "must"?

Mr R.H. COOK: I acknowledge the member's comments about a contact person being a "good egg"—someone who is simply trying to assist the process. We would not want them to be unnecessarily penalised or, indeed, inappropriately discouraged from playing that role. I certainly accept the member's arguments in that regard. This is about making sure that a person can provide information to the board in a manner that allows the board to undertake its functions. In the way they ordinarily would not be able to provide it to a third party, this simply provides coverage for that person to provide that information so that the board can carry out its functions under the legislation.

The word "may" is used because some people are compelled to provide that information, such as a medical practitioner or someone to that effect, but, ultimately, a person at large cannot be compelled in that context, so the provision essentially empowers them to be able to do that if they wish to make that information available.

Amendment put and negatived.

The ACTING SPEAKER: The member for Girrawheen is not moving her second amendment.

Mr P.A. KATSAMBANIS: Clause 149(2) states —

> A person may comply with a request under subsection (1) despite any enactment that prohibits or restricts the disclosure of the information.

If a person so complies, where is the protection for any breach of the prohibition or restriction of the disclosure that is contained in any other enactment? How are they protected from any prosecution under other acts if they comply with this request?

Mr R.H. COOK: By that very clause, member. That is the intent of this clause—to provide them with that protection. My attention is also being drawn to clauses 112 and 113, which provide further protections for persons acting in accordance with the legislation.

Mr P.A. KATSAMBANIS: Would that cover any prohibitions under federal law?

Mr R.H. COOK: State laws cannot bind commonwealth laws.

Clause put and passed.

Clause 150: Disclosure of information —

Mrs A.K. HAYDEN: Clause 150 states —

> The Board may, on request, disclose information (other than personal information) obtained in the performance of its functions to —
>
> (a) a public authority as defined in the *Health Services Act 2016* section 6; or
>
> (b) a person or body for the purposes of education or research.

If we have the purposes of education or research in paragraph (b), what is the reason for paragraph (a)?

Mr R.H. COOK: The purpose is basically to make sure that information can be shared in two different ways. The purpose of this provision is to enable public authorities, researchers and educational bodies to directly or indirectly improve or assist in in the provision of the services these agencies provide to the WA community. The Health Services Act defines "public authority" as —

> … any of these persons or bodies —
>
> (a) a department of the Public Service;
>
> (b) a State agency or instrumentality;
>
> (c) a local government, regional local government or regional subsidiary;
>
> (d) a body … or the holder of an office, post or position, established or continued for a public purpose under a written law;
>
> (e) a person or body … prescribed …

The information about a person for the purposes of education or research is the one I was discussing with the member for Riverton earlier. If people are undertaking research in a university context to better understand, study or improve the system, that is obviously something that we would like to see encouraged.

Mrs A.K. HAYDEN: I thank the minister for that explanation. When he read out the list, he referred to a person or a body. Are they not already incorporated under paragraph (a)? My concern is that paragraph (b) says that information can be passed on for the purpose of education and research, but paragraph (a) does not say why it is being passed on—the purpose for it to be passed on. Under paragraph (b), there is a restriction that it is for research and education, whereas under paragraph (a), there is no such restriction.

Mr R.H. COOK: This is to further assist the board to carry out its functions of continued improvement of the legislation and the way it will operate. For instance, information may need to be provided to a disability services organisation that is involved in the provision of services to people accessing the voluntary assisted dying process or something of that nature. It is simply to make sure that the board operates in an open manner and provides information for the continued improvement of the legislation.

Clause put and passed.

Debate interrupted, pursuant to standing orders.

[Continued on page 7160.]