

Mr Mark McGowan; Mr Zak Kirkup; Ms Mia Davies; Mrs Liza Harvey; Dr David Honey; Mr Terry Redman; Mr Tony Krsticevic; Mr Kyran O'Donnell; Dr Mike Nahan; Mr Shane Love; Mr Peter Rundle; Ms Margaret Quirk; Mr John McGrath; Mr Dean Nalder; Amber-Jade Sanderson; Mrs Alyssa Hayden; Mr Sean L'Estrange; Mr Peter Katsambanis; Mr Roger Cook

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## VOLUNTARY ASSISTED DYING BILL 2019

### *Third Reading*

Resumed from 19 September.

**MR M. McGOWAN (Rockingham — Premier)** [3.51 pm]: I rise to make a brief contribution to the third reading of this very important legislation. This has been an exhaustive, exhausting and long debate. It is one of the longest debates that I can remember in my time as a member of Parliament, which now stretches for nearly 23 years. I thank the parliamentary staff and members for the late nights and the long work hours that have been involved in this legislation. I thank the advisers and drafters of the legislation for all their work. I thought they were outstanding. When I sat at the table managing the legislation, I thought the advice I received was absolutely excellent and first-rate. I would like to thank the public servants and, indeed, Mr Malcolm McCusker, QC, for his assistance as well.

This bill has now had around 70 hours of debate in this house. No-one can say that this bill has not been fully scrutinised. People would be wrong to argue that the legislation has been rushed. Anyone who says that either has an agenda or has not been paying attention. For periods, it was taking over an hour to go through single clauses, including the name of the legislation. However, despite the often glacial and repetitive nature of the questioning, and some rather unusual analogies and hypothetical scenarios presented by some members, ultimately, throughout consideration in detail, I thought members conducted themselves fairly well. Amendments were handled in a timely manner and given proper consideration by the minister and the Parliament. In that context, I would like to thank the Minister for Health and the Attorney General for all their work as well.

We saw MPs dedicated to their jobs, being the legislators they were elected to be. We saw members telling their stories to this Parliament; stories of lives well lived but with terrible, horrible ends; stories of family members and friends, of constituents and relatives; heartbreaking stories of the end of life of people whom members knew. It showed that we are all human beings and we are all part of the community, and we all have family members, friends and people we know. Those stories came into the debate. I want to go through some of them.

The member for Baldvis told the story of his cousin Darren, his rapid decline from motor neurone disease and the heartbreak of Darren's wife, Kirsten, having to watch her husband die. They were childhood sweethearts. They met over the back fence in Rossmoyne. The member for Butler spoke of his own diagnosis with T-cell lymphoma and the genuine experiences and wishes of people who find themselves in chemo rooms enduring long periods of treatment. The member for Kalamunda told the story of two of his brothers who have passed away. He believes that both would have chosen differently if offered the option of voluntary assisted dying, and everyone would like to have the choice. The members for Victoria Park, Fremantle and West Swan told the stories of their fathers' deaths and the human desire to have our loved ones stay with us, even when it is time for them to go. The member for Murray-Wellington told the story of her father, who, despite having the best of palliative care, it was not enough to stop him from screaming in pain for long periods of time.

The member for South Perth shared the story of Katherine McBarron and her family's experiences with Huntington's disease. He told us that he will be thinking of her when he votes on this legislation, perhaps later today. The member for Vasse shared Peta Quinlivan's story of her husband, Russell. Russell was ill for 20 years, in chronic pain for 10. In the end, he was not afraid of dying but he was afraid of how it would go or whether it would drag out. Peta was certain that Russell would have wanted a choice as to the nature and timing of his own end.

The member for Belmont shared stories from the consultations that she has been a part of and the common reports from seniors stockpiling their medication in case the time comes. The member for Maylands told the story of her friend Mary's struggle with an incurable disease. The member for Warren-Blackwood spoke of his brother, who passed away from mesothelioma. He shared that he knew his brother wanted a choice and his sister-in-law confirmed that his brother never changed his mind. My condolences go to the member.

The member for Collie-Preston told this house about his father's battle with cancer and the frustration that his father's wishes about the nature of his own death could not be taken into account by medical professionals. The member for Burns Beach shared his harrowing stories as a police officer, of being the first to attend scenes when members of the public took their own lives, sometimes in horrible ways, when they saw no other dignified way out. The member for Bicton told the heartbreaking story of her constituent Pat and his wife, Mary, who suffered from Alzheimer's, then a fall, bronchitis and ultimately pneumonia. He pleaded with her to support the legislation because no-one should have to make that kind of decision for their loved ones. The member for Perth told us the story of his mother, Dallas, and her diagnosis with a brain tumour, of the complications she suffered, of his time

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caring for her, of the tears streaming down her face when she was in the hospice, and the fact that his story was all too common.

There are far too many stories in the chamber; they cross party lines and they reflect the broader community. Every family in Western Australia has these stories. Every family in Australia has these stories. There are thousands and thousands more, all over our state and nation, watching this debate and hoping that the Parliament does the right thing by these people. They are the reason we debate these issues here today and in coming months in the Legislative Council. We are hopefully finishing this house's role in the legislative process. This is good legislation. It is very well drafted and carefully considered. The government has devoted a huge amount of resources to this bill. It does not require amendment. It does not require further frustration and delay from an additional inquiry.

I remind members, and all Western Australians, that we are nearing the end of a two-and-a-half-year process, which has come at the culmination of a decades' long campaign. People like Hon Robin Chapple and other members of Parliament have been campaigning around this issue for many, many years. It should be above politics. Members' votes should not be decided based upon who is supporting the bill and who is not. Members should decide their vote based upon their own view of the issue. Members should also decide their vote based upon the experiences of their constituents and the stories we have heard about the horrible, awful and lingering deaths of people in our community, who suffered pain and incontinence and everything that goes with death.

In that two-and-a-half-year process, there was the inquiry by the Joint Select Committee on End of Life Choices. That committee involved members of both houses, from across the political spectrum. It ran for 12 months, held 81 public hearings, and received around 700 submissions. There was also the work of the Ministerial Expert Panel on Voluntary Assisted Dying. That included the largest program of public consultation ever undertaken by the Western Australian Department of Health. The result of that extensive body of work is the legislation we are discussing now and that we have exhaustively scrutinised for more than 70 hours. Any additional inquiries would be a waste of time and taxpayer money. Moves to create another inquiry would be nothing more than a delaying tactic from the opponents of this bill, who never want to see it become law.

This is a safe and conservative regime. It is backed by a large increase in palliative care funding. We know that 88 per cent of Western Australians want this legislation to be passed. I hope that the final vote in this chamber will roughly reflect, while not matching it exactly, the level of public support. However, we also know that the numbers in the Legislative Council are much tighter. The Legislative Council has an important role to play in both our democracy and our legislative process. However, we also know that the Legislative Council is different from the Legislative Assembly. If the conventions and restrictions of the Legislative Council are used to further political agendas, that chamber will not be doing its duty. I would like all members of the Legislative Council, on all sides, to exercise the free vote that they have been given. I say to all members of the Legislative Council: this is your chance to truly exercise your conscience. Do not waste it by giving in to factional powerbrokers. This is your choice, on perhaps the most important issue you will ever deal with in this Parliament. When you look back on your career as a parliamentarian, make sure you look back with joy that you did something good and that you believed in, that you were not bound by party lines, and that you did not give in to those who would bully and intimidate—the factional powerbrokers.

This is not a call to rush. Nothing about this bill has been rushed, and nothing will be rushed. From the consultation to the debate, and to the 18-month implementation period, we have moved deliberately and with the greatest of caution, given the gravity of the issue. But the public wants this done.

I said in my second reading contribution that this is a debate on which convictions are sincerely held and reasonable people can disagree. However, to politically delay and frustrate this bill is to needlessly prolong the suffering of other Western Australians. Worse still, to prevent a vote is undemocratic and cowardly. Members, this is not a choice between life and death. It is a choice about the manner in which death will occur for someone who is terminally ill and suffering in their last weeks and months of life. The public wants to have that choice. I say to members: think of yourself in that circumstance. If you are lying in that bed, would you want to know that you have that choice? Do you really want to go through those weeks and months of suffering, or do you not? Think of it in those terms—if it were you, or your parents. That is the issue of conscience we are dealing with.

To all Western Australians, I have a request: if you believe that there should be a safe and compassionate way for the terminally ill who are suffering to have a dignified end, if you believe that people who are of sound mind should have the freedom to choose a good death in the face of pain and distress without prospect of relief, and if you believe that Parliament must do its job and come to a final vote this year, please, in the coming weeks, make your voices heard. Post something online, write a letter to the newspaper, attend a rally, and contact the member of Parliament who represents you, whether or not you voted for them. Tell the members of the Legislative Council

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that you support the bill that has been developed based upon the advice of experts and some of the sharpest legal minds in Australia. Tell them you do not want this issue to drag on unresolved. Tell them you want to see leadership on this important issue. Finally, and most importantly, tell the members of the Legislative Council your personal stories, of your loved ones, your neighbours, and your own situation, whatever it may be. Make it so that you cannot be ignored, and they know that you are paying close attention. We have come so far on this issue. Let us take the last step together. Be brave, be kind, and let us pass this law together. Thank you.

[Applause.]

**MR Z.R.F. KIRKUP (Dawesville)** [4.06 pm]: I also wish to speak on the third reading of the Voluntary Assisted Dying Bill 2019. I note that the Premier suggested that the debate on the bill has taken 70 hours. On my count, it has now taken around 67 hours and 25 minutes. Nonetheless, I think we can all agree that a significant period of time has been dedicated thus far to this debate. It would be a fair suggestion from those outside this place that perhaps I could add little more to what has already been said. However, that would forget the critical point that this is a very important and historic piece of legislation. I suspect this is the most significant piece of legislation that this chamber has dealt with for some time.

Before I begin, I would like to take the opportunity to give a couple of commendations. This is perhaps more reflective of our end-of-year speeches. However, given my position as manager of opposition business, I want to recognise a number of people who have helped the legislation get to this place, and a number of people who have supported me along the way. I would firstly like to thank the people of my district. Since I made my second reading contribution to this debate, the people of my district have been immensely supportive of me and the position I have taken. Only one single, solitary constituent has suggested that they are dissatisfied with the position I have taken and the subsequent contribution I made on the bill. My engagement and my conversations with my community have been personally enriching and have served to reinforce the pride that I have in representing the amazing residents of the district that I represent within Mandurah.

Staying with Mandurah, I would like to reciprocate the thanks that were offered by the Leader of the House in the debate on Thursday. I do not think it was entirely necessary that on the first Thursday on which we debated this bill in consideration in detail, we broke our backs and took this bill into the hours of pre-dawn. However, since that time, we have worked well together in managing to land certain critical stages of this bill on the forecast days and at the forecast times. I appreciate the minister's assistance in being able to do that.

I would also like to recognise the minister's advisers, in particular Jane Laurence, Amanda Bolleter, Lisa Furness, Daphne Fernandes, Marion Huntly and Carol Conley. I have only ever advised a former Premier during budget estimates. I know it is a particularly taxing moment for advisers. From my reflection of how the advisers operated, they did exceptionally well and handled themselves with absolute equanimity. They should be applauded for their professionalism and dedication to what has been a very consequential and substantial task. No doubt the Minister for Health will speak to that as well.

I would also like to note the efforts of Hon Malcolm McCusker, AC, CVO, QC. I suspect that, much like the landmark bill itself, it is a rare experience for any of us in this place that the former Governor of Western Australia would be an adviser to a minister of the Crown. I doubt that has ever happened in the history of this place, and I doubt that in my lifetime, whether I am in this place or simply a citizen on the outside, it will ever happen again. I think it is probably a reflection of the very historic nature of what we have witnessed in this place. I have to say, with a moment of personal indulgence, that I found the interactions I managed to have with the former Governor to be personally very enriching. As a kid who grew up in Midland and was elected to Dawesville and is now a shadow minister, it is not lost on me that I am dealing with one of the most historic bills in this place. I have had the opportunity to discuss, debate and dissect this legislation with one of the most established, respected and decorated Western Australians I have seen in my lifetime. The adventure and beauty of our democracy was highlighted to me in the numerous opportunities I had to discuss this Voluntary Assisted Dying Bill, at length in some instances, with our former Governor. To him I say thanks for that opportunity.

It is with a similar spirit of adventure, I suppose, that I reflect on and thank all the Assembly staff for the work they did in supporting us here and, indeed, the parliamentary staff more broadly. The preparation put into ensuring ourselves as members were well supported and, of course, the measures put in place to support the staff were vitally important and shows the maturity of this important institution. To all those who are not necessarily on this floor but helped support us in immeasurable other ways, on behalf of all members, certainly on my side, I am sure we offer our thanks for the important work they did in getting us here.

Finally, I thank my Liberal colleagues for the support they have given me and the team I have been part of. This is particularly challenging legislation for me personally due to the exhaustive process I and a number of other

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members went through. Of course, this is the first bill I have had an opportunity to deal with as the shadow lead, although it was a conscience vote, and as the manager for opposition business. I found the support from my team, particularly my Whip and my leader, to be very beneficial and I thank them for their support.

I personally found during this legislative process of dealing with the VAD bill that the role of manager of opposition business is something I have immensely enjoyed. I suspect that if I had known about that job when I was much younger, that title would have been on the business card I handed John Howard rather than the words “Future PM”. Manager of opposition business and the relationship I have had with the member for Mandurah as Leader of the House has been really good. It has reinforced the importance of the relationship particularly when important —

**Mr R.H. Cook:** There is still time, member. You can do better than the current PM!

**Mr Z.R.F. KIRKUP:** You are very kind, minister. Our relationship and the importance of our roles are reinforced when we debate such substantial legislation as is here today.

I turn now to the bill itself. A number of issues were raised in debate in consideration in detail that I do not want to reiterate. I do not see the need to repeat them all but I would like to highlight a few critical points that deserve re-highlighting for a range of my own personal considerations. I will briefly discuss—not wanting to add more to the 67–70 hours—the forms we have discussed here, certainly during consideration in detail, the portal, the role of parliamentary accountability, the commerciality that exists between practitioners, some of the logistics and logistical issues that were raised and the use of audiovisual means to access the various voluntary assisted dying processes. I am conscious, of course, of the need to make my remarks typically third reading and ensure they appropriately pin to each clause of the bill.

Firstly, I want to talk about the provisions, of which there are many, covering the filling out of various forms as part of the safeguards the government has attached to this legislation. I think the minister can correct me if I am wrong but this legislation requires something in the order of 18 forms to be filled out at various stages, on various decisions or various changes by practitioners, contact people and the patients themselves. That means there is a high reliance on the paperwork with a number of penalties rightly put in place when those forms are not properly filled out and submitted. I do not take issue with the number of forms at all. I raised them a number of times and I implore the expert panel that if this bill becomes an act, to look at collecting as much information as possible attached to those forms. I echoed this concern at the start of the process and throughout that it is best that we collect as much information on patients who access, if it eventuates, voluntary assisted dying. We are better off having too much information rather than too little. Given the domestic and global interest that maybe achieved in this place, it is important to have a rich dataset of people who wish to access this process. I realise there is a legislative requirement as part of those forms with the information that is collected. Even a census-like separate optional survey or something like that that could be collected will be important to help inform future decision-makers, and perhaps globally, about people wishing to access voluntary assisted dying in Western Australia. It is very important. All of us here want to make sure there are no information gaps. I do not suggest there are here; I believe we could collect far more information than the minimum that is mandated as part of this legislation: information such as people’s socioeconomic background and their culturally and linguistic diversity. I would like to look at the locations people come from. I think that could help us to identify people throughout the process in a prudent manner. Perhaps we can look at diagnoses and see certain markers developing in Western Australia that can help us as future legislators and help future governments understand in better detail how people access voluntary assisted dying. I think the data we collect as part of this legislation, even in the form it takes now, will have a very beneficial outcome for future governments, both here and obviously in other jurisdictions. I think we can seek to better understand the treatment pathways, the patient profiles and any other improvements of the system to sustain the nature of the legislation as well as looking at possible other treatment and care options that might be available.

Secondly, and leading from this, I would like to talk about the mechanics of the Voluntary Assisted Dying Board and how it will physically deal with these forms. We have spoken a lot about distance and regionalism, in particular my concern about those in regional and remote Aboriginal communities, for example. As we know, the legislation provides that a number of forms have to be lodged within two business days, usually by practitioners, and give rise to the requisite penalties if that does not occur. Some of the forms have to be lodged by practitioners who have a high level of education and experience. However, some have to be lodged by the patient or their contact person who may not have such qualifications or experience. With this in mind, I encourage the department, the clinical expert panel and the minister to look at investing in an online portal to provide accessibility for all the people who participate in or interact with the process in some way, shape or form. An online portal will provide safeguards that will ensure appropriate accountability and that patients could not proceed without ensuring each form is lodged appropriately or each practitioner has lodged their form appropriately. The portal could, ideally, lay out a path and reflect the certain gates enshrined as part of the legislation, as we have seen during our deliberations. I think it would

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act as a necessary safeguard before we get to the ultimate administration of the substance. An online portal would also allow for the important translation of languages for those who might come from a culturally or linguistically diverse background which, as we know, could happen a lot easier with an online format than a paper-based one.

We have enshrined the requirement that information for practitioner resources can be found online. There are a lot of reference points throughout the legislation that state that the Department of Health will have information on its website or an associated website. I think there could be an opportunity for that portal to be part of that as well. As much as I believe it is possible, the system and the associated forms should be based online because of the protections, accessibility and accountability that that form will offer.

On the matter of accountability, I would like to briefly discuss the role of the Parliament in the legislation. Something I was very aware of from the very beginning was how much interaction we as parliamentarians will have when it comes to the provisions outlined here and the reporting that exists. I understand the legislation has provisions for a review clause and that routine annual reports have to be tabled in Parliament. As I said in consideration in detail to the minister, certainly within that review time at the very least, there was the opportunity for more extensive updates to Parliament. This is obviously very extraordinary legislation. Other extraordinary legislation such as the Terrorism (Preventative Detention) Act, requires quarterly reporting, and I think that that is something that could have been looked at for the review period. I realise the legislation requires the annual report to be tabled. However, perhaps given this is something that is certainly far and beyond the normal annual reporting processes, I do not think it should be up to members of Parliament to lodge questions during the annual reporting time. I think a more rigorous reporting regime could be looked at if there is an opportunity.

The Parliament certainly deserves that reporting frequency during the review, because I do not think this is a routine piece of legislation; none of us believe that it is. As such, as representatives, I think we should get as much access to information about what is occurring as we can—obviously that would be de-identified information. I would like to make sure that as legislators we see this through as much as we can and that the information that we harvest, the information that is published, is part and parcel to us ensuring that we have done our job—seeing that the spirit of what we have debated here gets implemented appropriately. That is about it right there; I will not continue down that line.

We also raised the matter of practitioners. We raised during consideration in detail and spoke at length about the role of any commerciality or financial interest that might exist between practitioners. I note that the minister said that ultimately it is very likely that there will not be much market demand, but the legislation does not explicitly rule that out. I still remain very concerned about there being an opportunity for some commercial or financial interest between practitioners. I take the minister's point that it would, of course, be a small number, but I think some clarity could be afforded in that respect. I note that the minister and a number of other members said to us in this chamber that they would not want to see that happen. If there is an opportunity for that to be looked at down the line, we should surely pursue it. Ultimately, I appreciate the point that there might not be much market demand, but I think there could be an opportunity to guard against it as part of any future look at this legislation. That could occur as part of scrutiny in the Legislative Council. As I have expressed to a number of members, in an ideal world this process would be best run in a government facility with the highest possible constraints, but I realise that is an impossibility given our jurisdiction. It could be done in a government-run facility such as a hospital or an existing facility or something else like that where palliative care could be delivered. That would remove any sense of commerciality or financial interest that could exist between practitioners. I do not cast aspersions on practitioners; I think it is just something we should be aware of.

Another issue I would like to detail, which I raised in my second reading contribution and which is certainly the issue raised most often in my community, is that of the substance itself. I absolutely accept that there has to be a decision to self-administer; I absolutely accept the nature of the substance itself. Obviously, by virtue of the legislation and the processes we have outlined, it is impossible to bind the patient once they have received the substance, because ultimately if they have succeeded in the process, they will face their death, and it is impossible for there to be legal ramifications for any errors they make once they have received the substance and when they self-administer it. I do not want to take away from the need from self-administration or from the patient's right to do so under the legislation. For much of the deliberations I have assumed that administration would occur in a home setting. That is the most likely, and I suspect that that will be the case in the majority of administration decisions, but there is the reality that it could occur outside of that setting. It could be done somewhere that is nostalgically important to the person or in a manner that might be culturally important to the person. I have always assumed that be done at the family home, but perhaps someone might not want that to occur at the family home because they do not like the environment there. I have approached the issue of the administration decision having made that assumption, and that is how we have debated it. I realise the shortcomings and innate risks of the fact

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that a patient cannot be demanded to do something anywhere in particular if they are self-administering. There could be the opportunity to look with a bit more understanding at where those decisions might be taking place. I do not think we should intrude on the autonomy of the patient, but it would be best for the state to understand where such a decision might ultimately be taking place and to encourage people to do it in a safe setting. I am conscious that doing it in a public setting could cause a very distressing situation—not by intent—for any onlookers or people who might come across it.

**Mr R.H. Cook:** Are you talking about the administration decision or the carrying out?

**Mr Z.R.F. KIRKUP:** Just the carrying out in a public setting. I realise, as I said at the start, that it is impossible to bind the patient, but ideally I would like to see a clinician or an observer be part of the process and encouragement to undertake it in a safe setting. I think that is very difficult to do.

**Mr J.E. McGrath:** What do you mean by a public setting? What are you thinking might be a public setting?

**Mr Z.R.F. KIRKUP:** I appreciate the interjection, member for South Perth. For example, I am conscious of datasets that show that other life-ending circumstances, such as suicides, are more likely to occur in hotels and motels. If there is a cultural or nostalgic decision, maybe someone will do it in a park or somewhere meaningful to them, especially if they were in a home environment that was abusive and so they might not want to do it at home. They might choose to do it somewhere else outside of their home setting. I am just conscious of the impact it has on the broader community, that is all. I have been approaching this issue for the entirety of the time as if it would be occurring only in the home environment, but I suppose we have to anticipate that that might not occur. In all reality it could occur anywhere. I realise that the counterargument they might be put to that is that these people are nearing the end of their lives; they are undoubtedly frail and possibly immobile. But if this happens at the very start of the six-months process and the prognosis, they might be still quite mobile and able to move around. That would be in the very early stages. We need to be conscious of every possible eventuality in practical terms. I do not have a solution; I am not suggesting that this is somehow a fatal flaw in the legislation. I do not have a solution of what things could look like; this is just something we need to be aware of. When I talk about that possibility to people in my district, they are aware of it. They are similarly concerned. As I have said previously, I think there is perhaps a limited window of opportunity for the practitioner to be more involved in the provision of the substance, or something like that, and has a bit more of a conversation. They might be encouraged to have a conversation with the patient about where they might seek to access this. Truth be told, outside of this being restricted to a hospital environment, I have no other solution. I think it is just the risk of what happens as part of this legislation. I have to trust that a lot of this detail will be pursued during the implementation stage, and I do have that trust.

A final issue I would like to highlight pertains to the various clauses that allow for audiovisual means that can be utilised for a patient to discuss voluntary assisted dying with their coordinating, consulting or administering practitioner. I think that is an important part of this, especially for those people living in a regional context, which I am sure you would appreciate, Acting Speaker (Stephen Price). There is now an increased reliance in our system on telehealth. We have highlighted a number of times, and this was confirmed by both sides across Parliament, considerable concerns about the interplay of the commonwealth Criminal Code Amendment (Suicide Related Material Offences) Act 2005, which made it an offence to use a carriage service for what is termed “suicide-related material”, with this legislation. I would like to briefly quote from the explanatory memorandum of the act. The minister spoke about this. I do not want to verbal him, and he is welcome to correct me if I am wrong, but he said to look at the debates from 2005, and he was right that the debate was largely silent on this issue, because I do not think anyone in 2005 had forecast that this is where society might be.

**Mr R.H. Cook:** It was in response to a couple of very high profile suicides that resulted from cyberbullying.

**Mr Z.R.F. KIRKUP:** I appreciate that, minister. I note that there was a heavy reliance in the second reading speech of Philip Ruddock, who I think was the minister, on that cyber aspect. Section 474.29A of the now amended commonwealth Criminal Code makes it an offence for a person to use a carriage service to access, transmit or make available material that incites or counsels for suicide, with the intention that they might use it themselves or somehow incite another. As the minister rightly pointed out, “access” is defined in that section as displaying material by computer or a format that is outputted from a computer. I appreciate the minister’s perspective here that voluntary assisted dying is not suicide—I understand that—but that is the confines of this place and our definition. The commonwealth Criminal Code is silent in that respect. We do not know the impact it would have if we just assume that the commonwealth will go along with what the state Parliament thinks. That is making a number of assumptions when we consider the ultimate fines that will be put in place are, I think, \$110 000 for individuals and \$500 000 for a bodies corporate that may be found to be unlawfully acting under the commonwealth Criminal Code amendments of 2005. I understand that Attorney General Quigley has written to

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Attorney-General Porter about this and I know he suggested during consideration in detail that he was satisfied and that this process was not captured. I just have very serious concerns. Doctors have suggested to me that they would like to make sure they are indemnified in some way, shape or form if they pursue this and the commonwealth tries to prosecute someone if they believe this falls within the definition of “suicide”. I realise that is a complex argument to make. My concern is that we are very close. The definitions in our legislation are so close that obviously there was a similar issue in Victoria. I believe that Victoria ultimately removed “audiovisual” as an option. However, I think that the removal of “audiovisual” would be detrimental in its impact on regional Western Australians, given the nature of our jurisdiction.

As I round out my contribution, I point out that I have not sought to raise the issues of the portal, the forms, the role of parliamentary accountability, the possible commercial link between practitioners, the logistics around the substance or the use of audiovisual means to access voluntary assisted suicide in order to be controversial; I think they are necessary to highlight, and reflect, what has been very thorough scrutiny of this legislation. I suspect that members in the other place will pay attention to these issues, and probably much more than I have been able to do. If the bill passes the other place, there needs to be a very serious look at these issues by the Department of Health and the clinical expert panel as part of that transition and implementation process.

I am conscious that the Parliament has been asked to accept certain risks associated with this legislation. To regulate and mitigate risk is not unique in this place, but in this instance, the bill affords the greatest possible consequence in allowing for the hastened death of somebody who is terminally ill. Notwithstanding the issues I have raised in my contribution today, it is still clear to me that the vast majority of people in my district want to see this legislation passed. I have always maintained that I will vote to reflect their views, but also that my role as a legislator should always be to ensure that whatever legislation gets my vote, it is as fit and proper as possible.

As I talk about the substance of the bill itself, I note that a number of amendments were moved, mostly by members of the Australian Labor Party. Their own review of the minister was that there was no negotiation and no intention to consider any amendment whatsoever. I suspect this might change when the bill goes to the other place and that a number of amendments will be moved to try to satisfy its passage through the Legislative Council. If that is the case and we are asked to reconsider amendments that we have already voted against or that the government took a position against in this house, then that, to me, will be disappointing. We could have ensured that the bill that left this place was as fit and proper as possible so that the other place would be of the view that it had been negotiated as much as possible and that the minister had worked in good faith with all members here to possibly get an amended view, if there was an issue that they wanted put to the house more thoroughly.

Throughout this entire process I have done what I believe has been my best to work in good faith with the minister and the chamber to improve the quality, controls and overall intent of what is being proposed. I am not alone in that; I think all members of this chamber, and particularly those who have been engaged in the process, have had a not dissimilar intent. I reject the assertion that any members, and particularly members of the Liberal Party, have worked to intentionally slow down the passage of this legislation. We have been asked to consider a very serious, watershed piece of legislation, and I think we have done our job as parliamentarians exceptionally well. There is the right balance with this legislation; however, I note that I expect it to be improved on, or at least that steps will be taken in the Legislative Council to try to improve upon it. With that in mind, I will close. I once again congratulate and thank my colleagues for their contributions and their support of me in this important role in which I have found myself on one of the most important pieces of legislation this chamber has seen for some time. I thank the chamber for its support. I again thank the district of Dawesville for its overwhelming support. I commend the Voluntary Assisted Dying Bill 2019 to the house.

**MS M.J. DAVIES (Central Wheatbelt — Leader of the Nationals WA)** [4.33 pm]: I will briefly close out the debate on the Voluntary Assisted Dying Bill 2019 from my perspective on behalf of the people of the central wheatbelt. I indicated my support for the legislation. I certainly agree with the member for Dawesville that this has been a watershed piece of legislation for this Parliament and for every member who has been included in the debate so far. Although I had indicated my support for this bill, the debate on it was an important period in which members of the opposition and members of the Nationals WA could scrutinise the bill. There was some criticism during the debate of the members who asked questions. I note that those questions came from both sides of the house. I may not agree with the ultimate position of some of those members on the bill, but they were absolutely entitled to ask those questions and satisfy themselves that there are no gaps or loopholes in the bill, to make this the best possible bill on its passage through to the Legislative Council. Perhaps I am less offended than some who have expressed their concern about this process, because I have been a member of the Legislative Council. It is the house of review; it is its job to go through that process. I saw that process up-front and personally for four years. But I think both houses are absolutely entitled to scrutinise legislation like this. I do not think there were

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vexatious or repetitious questions. As I said, I might not agree with the ultimate position that some of my colleagues in this place have arrived at on this bill, but I absolutely support their right to ask the questions that they asked. I felt that the debate was respectful and thorough.

The feedback I have received as this debate has been carried out is that the public expects us to behave appropriately and set an example when we are dealing with such serious issues. I reflect on the numerous conversations I had while debate on this bill was underway. We have had what we call show season in regional Western Australia, so there have been multiple opportunities at agricultural shows and events right throughout my electorate in particular, and certainly in others as well, for us to test the waters as this bill has progressed. I have to say that an overwhelming number of the people who came up to me support the bill and its intent, but always with the premise that we need to make sure that there are appropriate safeguards. The majority of the questioning from this side of the house was around the safeguards for eligibility and then also on the nitty-gritty of what will be put in place as part of its implementation. This is our opportunity, as members of Parliament, to make sure that we have a clear understanding of that prior to it getting to that stage, because the Department of Health and other practitioners will look at the intent of the legislation and the answers that the minister and the government have provided in the debate to clarify any concerns. It also provides us with an opportunity to go back and look at the debate to see how it was intended to be rolled out when this becomes law.

It would have been extraordinary if we had gotten through the business of this legislation in a week or even just two weeks. Most of the concerns that were raised with me—I am not sure if it was the same for my colleagues—were about the schedule of our sittings rather than the detail of the questions asked. There were concerns about whether we were doing our best work when we were sitting here in the early hours of the morning, for those who sat right through. They questioned whether we were able to apply ourselves to this incredibly important piece of legislation. The feedback, even as we carried on this debate, was that members of the public, particularly in my electorate, are supportive of the bill, but want to make sure that we are doing our job appropriately.

The questions we raised during the second reading debate and when following the debate through were predominantly from the perspective of regional people and the accessibility of the scheme should it become law. How can we ensure, if we introduce a new option, that those who live in our remote and regional communities can access it? There was significant conversation around that in terms of the implementation phase and the ability to use technology, but also about options utilised in other jurisdictions around the accessibility of GPs. For example, what will happen if a person lives in a single doctor community and the doctor chooses not to engage in voluntary assisted dying? What will that person in that regional or remote community do? The structure for that needs to be canvassed, and was at great length in the debate, to make sure that those who want to seek this option are not disadvantaged. If we introduce new services or initiatives, we should endeavour to make them as equitable as possible. That was certainly one of our serious concerns. I note that it was through the advocacy of the Nationals at the very beginning of this process that the schedule of hearings of the ministerial expert panel was expanded, because we felt that the panel was not going to enough locations in regional Western Australia for it to make sure that it was getting feedback on the ground and face to face. To the government's credit, it did expand the number of sites the panel visited and added a number of opportunities through the community resource centres to make sure the information was provided.

We also sought clarification and confirmation—this was canvassed at great length in this place—on the interaction between commonwealth legislation and the state legislation, in light of the fact that some concerns had been raised in Victoria, as it implemented its legislation, about commonwealth laws that were preventing people from having discussions with their GP or health practitioner around suicide, the definition of “suicide” and the definition in the legislation of “voluntary assisted dying”. The government does not think we will be impacted by that commonwealth legislation. I suspect that that will be an in-depth conversation in the other house as well, because that is a significant concern for us. If you cannot access your GP or health practitioner on this via videoconferencing or teleconferencing at any point along the journey, once you have commenced it, because you are in fear of being prosecuted under a commonwealth law, it will be of serious concern to us. I know that was canvassed widely, but I think we can anticipate that when it gets to the other place there will be further questions about that.

We also had general discussions around the notion that palliative care and the provision of palliative care is not dependent on whether or not this legislation progresses. In general, I think the thread that ran through all of the discussions that this is not an either/or argument. We should not have to wait until palliative care is provided to a standard that everybody expects before we introduce this legislation. It is very difficult in the provision of health services to understand what that might look like from everyone's perspective, particularly in a health jurisdiction as big as Western Australia. I think, undeniably, every single person in this place and in the broader community would agree that we need increased funding into palliative care services, because there is a real lack of those, not just in the metro area, but certainly in regional Western Australia. We all continue to advocate for that. This is



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about making sure that we have access to voluntary assisted dying for everybody outside the metropolitan area, in the same way that our metro counterparts have.

Before I move on to the last bit, I will turn to some other things that were raised. The member for Dawesville touched on some concerns about the remuneration clauses. Obviously when dollars are involved, concerns start to be raised. I am sure that there are appropriate safeguards in there. Also, community expectations will set the tone for that, going forward. There are a number of very technical details around implementation, and those were canvassed in-depth. I put on record my thanks to those members who went through the legislation with a fine toothcomb. It was a considerable effort and, from our perspective of participating in and being part of that debate, after hearing the government's responses I am confident in my assessment that this legislation should be supported. I have not been persuaded otherwise as a result of the consideration in detail process.

When I made my contribution to the second reading debate, I said that I spoke on behalf of the people of the central wheatbelt, and that they were both pragmatic and compassionate. It is my view that a majority of them—not all—certainly support this legislation, and I said that in the context that I voted against an earlier and very different iteration of this legislation in the Legislative Council, nearly 10 years ago. Over those 10 years, my views have changed. The work that has been done by the Ministerial Expert Panel on Voluntary Assisted Dying, the Joint Select Committee on End of Life Choices and the Parliament to this point has meant that I have confidence that this is a piece of legislation that should go through. I respect those who do not agree. I respect that not everyone in my community and not everyone in this chamber shares those views, and I thank everyone for the way that the debate was conducted to allow everyone to put their views on the table for what is a very sensitive issue. I thank everyone in the central wheatbelt who provided me with their details. I reiterate that, from my perspective, the people of the central wheatbelt are, by and large, supportive of this legislation and of allowing us to give to people who are in pain and suffering and likely to die within a foreseeable time frame the opportunity to go gently and to die with dignity. Once this debate is completed in this place, I look forward to the legislation progressing to the Legislative Council and I hope that it will conduct itself in the same way as everyone in this chamber has. That is not something that we are particularly known for in this chamber; we are normally more robust. But certainly from my perspective, kudos to everyone who has been involved, across the chamber and on this side, for making sure that we have been thorough in our investigation and consideration of what is, indeed, a landmark piece of legislation for this state.

**MRS L.M. HARVEY (Scarborough — Leader of the Opposition)** [4.45 pm]: I rise to contribute to the third reading debate on the Voluntary Assisted Dying Bill 2019. I will open my remarks by saying that I believe and agree that, for a very limited number of people in the community who have been suffering with the most horrendous diseases that have horrific symptoms and a high degree of suffering, an option like voluntary assisted dying is a choice that people should have. I have arrived at that conclusion after reading through many emails, listening to many people in my community, hearing their horrendous stories, and also from my own experience of watching a loved one go through death from cancer. I will be meeting in the very near future with Belinda Teh. I was, indeed, very moved by her account of her mother's awful end-of-life experience. I also took counsel from my younger sister, who is a nurse at Sir Charles Gairdner Hospital. She works with people who have the most horrendous cancers—head and neck cancers—that are often horrific, symptomatically. I understand that for people in those situations, palliative sedation is not always necessarily an option that will relieve suffering; not in every instance. I believe that for 99 per cent of people, appropriate palliative care and palliative sedation are very gentle ways for people to be eased towards the end of their life, but for a very small number of people, palliative sedation actually does not work. I believe voluntary assisted dying needs to be available for those people.

I have to say that I have struggled with this issue ethically. I have a great ethical belief that it is wrong for a human being to end another human being's life. That is an ethical belief that I hold dear; it feels like it is part of my DNA. But I also understand the other side of that ethical conversation. It is also wrong, ethically, to witness and allow people to suffer unendurably if there is the option to provide some relief to their suffering. In balancing those two things, I have come to the conclusion that I would like to support voluntary assisted dying legislation. However, I am not going to vote for it at this time, and I will articulate my reasons for that.

During the debate we raised various issues around making sure protections were in place for vulnerable people. The member for Armadale moved an amendment from his own personal experiences and his own deep-seated fear about the vulnerability to exploitation that come with his own daughter's disability, and the possibility of coercion or being talked into accessing voluntary assisted dying. He moved the amendment to prevent a doctor from initiating a conversation and offering voluntary assisted dying to a patient. I thought that amendment was a sound amendment and an appropriate protection for vulnerable people. The minister has not adequately explained why that component, which is part of the Victorian legislation, was excluded from the Western Australian legislation. The minister said at the beginning that, notwithstanding that this was a conscience vote, no amendments would be

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entertained by the government, which is really how a government-sponsored bill is treated, not a bill on a conscience vote. I hope that members in the Legislative Council will do their due diligence with this legislation. The minister flagged that, although he would not entertain any amendments put forward from the Assembly, he expected that amendments would be made in the Legislative Council. I hope that means that when those amendments are moved in the Council, they can come back to this chamber. If the protection that I believe is essential around doctors not being able to offer voluntary assisted dying as a treatment option is included, I will vote for this legislation at that time. It is impossible to get legislation on voluntary assisted dying 100 per cent right. The sad thing is that when this is introduced, we will find out through trial and error whether it achieves the outcomes that the government says it wants to achieve.

We talked at length about the inadequacy of the provision of palliative care services in Western Australia. The minister was at pains to say that in other jurisdictions when voluntary assisted dying legislation was introduced, palliative care options and opportunities to access palliative care improved. We will wait to see whether that occurs in Western Australia, and I sincerely hope that it does. With the geography we have in Western Australia, the inequality of access to palliative care is of grave concern. It needs to be funded by the government, and we should have the highest proportion of palliative care specialists to population of all the Australian states, not the lowest, as it is at present. It concerns me that no key performance indicator or goal has been set by the government for the target we are hoping to achieve with palliative care specialists per 100 000 population. What standard will be put out there to achieve, and by when? None of those targets were revealed during the course of the debate, and I think they should be an important component of this debate.

Part of the reason I wanted the amendment to prohibit doctors from offering voluntary assisted dying as a treatment choice is that I do not believe it should be a treatment option. A person with cancer, motor neuron disease or some other disease that is symptomatic and causes pain and suffering, or whatever it might be, at the point at which they have had enough, should be making a request to the doctor asking whether something can be done about this. I mentioned during consideration in detail that my concern is about some seniors in the community, who revere doctors. If they were given a choice of chemotherapy or radiation therapy that would bring lots of side-effects, with the family waiting around watching the suffering, and all that that entails versus, “Or we could give you voluntary assisted dying, and you can assemble the family and we can give you an injection or you can take a substance, and in two weeks this would all be over, and you won't be a burden on anybody”, for some seniors and some people from diverse backgrounds, it may be that they would take the easy option and not stay in the fight.

That is important, because people can access voluntary assisted dying, once this legislation is passed, if they have a prognosis of six months or less. I articulated that my late husband received that prognosis—that he had six months to live. In fact, in August he was told, “We'll try and get you past Christmas.” He lived for three and a half years after that. He would have been eligible to access voluntary assisted dying. He did indeed go on to the Google medicine page to have a look at what was ahead of him, and he did not think he was going to be able to endure any treatment. He did not think he would be able to cope with any chemotherapy. He turned out to be a seriously tough patient, and lived far longer than anyone imagined, and lived for a long time with unbelievably poor physical condition, but he had an amazing will to live. I accept that it was his choice. He did not want, at the end, to access voluntary assisted dying. However, he could have done so early on, and we would never have been witness to the sheer courage and bravery that was on display in seeing him fight his disease. As I said, in his circumstance, with fantastic palliative care services, he did not suffer. It could be argued that over the last few days of sedation, there may have been some pain and suffering involved, but that was not apparent to me, as a witness to his experience.

The other aspect of the legislation that I thought was really curious was that the minister refused to put in a definition of palliative care, and a good reason was not really put forward for that. We know that palliative care is such an important part of voluntary assisted dying. Indeed, the minister said that in all jurisdictions where voluntary assisted dying was available, palliative care improves. When palliative care is mentioned as one of the founding, if you like, core principles of the bill—every individual should have access to good quality palliative care—why not put in a definition? That was not adequately explained, and I believe that that will be thrashed out in the Legislative Council.

There is another area that we need to keep a very close watch on. It was said that there had been a number of suicides of people with terminal illnesses who took their own lives in the absence of voluntary assisted dying. I will be interested to see whether the number of those suicides is reduced in response to access to voluntary assisted dying as an option of last resort. I say that because, with some of those suicides—we have heard talk about farmers, for example, with access to firearms, who get to the point where they think it is time to clock out—for police officers, emergency services and family members to find somebody who has died of a gunshot wound is not a pleasant experience, and I can understand why we would work hard to prevent that from occurring. However, when we look at the processes that that farmer would have to go through to access voluntary assisted dying, it may

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well be that he will choose the rifle option anyway, because it is easier, closer to home, and does not involve any rigmarole at all. That is something we will need to watch once the legislation goes through.

In regard to the interaction with the commonwealth legislation, with people in regional and remote areas being able to access voluntary assisted dying via video link, there is quite a way for that to play out. It is going to be an interesting debate, and we will need some very bright legal minds to look at how that can work. How will the interpretations in the Western Australian voluntary assisted dying legislation and the definition of suicide in the commonwealth jurisdiction intersect? What would be the government's backup plan, should that video link option to access voluntary assisted dying be ruled incompatible with the commonwealth legislation? What then can we put in place for regional constituents to access voluntary assisted dying? Will there be doctors who can fly around regional WA to provide a service? How do we ensure equality of access to voluntary assisted dying, should that be introduced?

I would like to cover off on a couple of other things. I was not in the chamber, but I was listening to the Premier's address in my office, and there seemed to be an inference—I do not know what it is in response to—that somehow members of the Liberal Party who might be voting against this legislation, or indeed for it, were not voting of their own volition or with their own conscience, but were voting somehow in response to undue influence of powerbrokers within the Liberal Party.

I find that highly offensive and a very insulting assertion to make. I am a 52-year-old woman. I bring significant life experience to this place. I consider myself to be an independently minded woman with some experience, both in this chamber and outside this chamber, which I bring to bear along with members of my community and people from outside my constituency on important matters such as access to voluntary assisted dying. For the Premier to imply that I am in any way, shape or form voting according to pressure from any other person, let alone the illusionary Liberal Party powerbroker, is highly offensive to me and all my members.

I said in my speech in the second reading debate that I believed that the vote on this legislation—for or against it—should largely be in keeping with how the community feels about voluntary euthanasia. Several polls have been conducted and it seems that 80 per cent are in favour and 20 per cent are against. If this is a true conscience vote, the votes in this chamber should be reflective of how the community is voting and there should be an 80–20 split of yeses and noes because that is a reflection of the views of the community. We were elected by our community to reflect their views. I believe that when we divide on this legislation, the voting outcome in this place should reflect the polling outcomes in the community. I do not condemn anybody who has a different view from mine. I certainly do not question that they have done their due diligence in arriving at their view. I would never accuse any member on any side of politics of abrogating their responsibilities to make a conscience vote on very important landmark legislation according to their ethics, beliefs and consultation to acquiesce to bullying in whatever party it might be. I would never accuse anyone of that. I wanted to put on the record that I respect the views of every person in the chamber. I respect how they vote and I will not pillory anybody for voting in a different way from how I intend to vote on this legislation. That is the treatment that I expect of the leader of the state government, and that is not what we have received.

The other issue that I would like to raise is the late sittings. We sat all night on a Thursday, and then we sat from nine o'clock in the morning until 5.30 on the Friday morning. We had 20 hours and 22 minutes straight of sitting. Goodness knows why; we still have weeks of Parliament left. People working in this chamber were being paid overtime. We had staff hanging around making sure that there were drinks and food available for members because members were tired. Some members brought in mattresses and pillows and slept. As a small team, most of the Liberal Party members did not have that luxury. We stayed together. I am very proud to say that most of my members were in the chamber for the vast majority of the debate.

Why there is such a rush has not been explained. I raise this because the Leader of the Opposition in the Legislative Council, Hon Peter Collier, said to me that he had been advised several weeks ago that the Legislative Council should expect the voluntary assisted dying legislation to pass through the Assembly by the end of September, with the expectation that the Legislative Council would commence debate in October. The leader of the Liberal Party in the Legislative Council provided me with a priority legislation list dated August 2019 for the Legislative Council. I would like to read that list. It states —

**Priority bills currently listed in the LC**

TAB (Disposal) Bill 2019

Betting Control Amendment (Taxing) Bill 2019

Appropriation (Recurrent ...) Bill 2019

Appropriation (Capital ...) Bill 2019

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Police Amendment (Medical Retirement) Bill 2019  
Road Traffic Amendment (Blood Alcohol Content) Bill 2019  
Criminal Appeals Amendment Bill 2019  
Corruption, Crime and Misconduct Amendment Bill 2017  
Consumer Protection Legislation Amendment Bill 2018  
Residential Parks (Long-stay Tenants) Amendment Bill 2018  
Births, Deaths and Marriages Registration Amendment (Change of Name) Bill 2018  
Human Reproductive Technology and Surrogacy Legislation Amendment Bill 2018  
*\*Ticket Scalping Bill 2018 will be prioritised once the Committee reports (due 5/9/19)*

**Bills currently listed in the LA, that will be prioritised in the LC**

Terrorism (Preventative Detention) Amendment Bill 2019  
High Risk Offenders Bill 2019  
Wittenoom Closure Bill 2019  
Civil Procedure (Representative Proceedings) Bill 2019  
Criminal Law Amendment (Uncertain Dates) Bill 2019  
Transfer of Land Amendment Bill 2018  
Small Business Development Corporation Amendment Bill 2019

I apologise; this is very dry. I continue —

Metropolitan Region Scheme (Beeliar Wetlands) Bill 2018

There were 21 pieces of legislation on the priority list for the Legislative Council with one piece of legislation missing. The Voluntary Assisted Dying Bill 2019 is glaringly absent. It has not been listed in the Legislative Council as a priority bill for debate. We can imagine that confusion is caused when we have late-night sittings; we were here until 12.30, then 1.30 and then overnight until 5.30 in the morning and the next week we had late night sittings until 12.30, or it might have been one o'clock. I think we might have finished at about seven or eight o'clock on the Thursday; I cannot remember when we finished. It was all a bit of a blur.

**Mr D.A. Templeman:** It was half past four. We finished early.

**Mrs L.M. HARVEY:** We finished early; that is right. However, we had all those additional hours of sitting because of some supposed desire to get this legislation through so that it could go to the other place, be debated and get through by the end of the year, yet it is not even listed. It is not even on the second list of bills currently in the Legislative Assembly that will be prioritised in the Legislative Council. I suggest that the Leader of the House and the Minister for Health get on to Hon Sue Ellery, who is apparently managing business in the Legislative Council, to list this bill as a priority for debate if they would like to get it through by the end of the year because it is currently not listed.

**Mr D.A. Templeman:** I think you'll see it there once it arrives in the other place.

**Mrs L.M. HARVEY:** We have the alternative list—the bills currently listed in the Legislative Assembly that will be prioritised in the Legislative Council. The Voluntary Assisted Dying Bill is not on that list either, which is a bit curious.

**Mr D.A. Templeman** interjected.

**The ACTING SPEAKER:** Members, please.

**Mrs L.M. HARVEY:** I thought that was a bit curious and worthwhile raising in the third reading debate because it sends mixed messages about the priority of this legislation and the government's commitment to getting it through by the end of the year, as it suggested it would like to.

In closing, I would like to thank all members who contributed to the consideration in detail stage, and indeed the detail and examination of this bill, particularly the members for Girrawheen, Armadale and Cannington. It is very brave to stand against a tide of people in your own political party who have a different point of view from your own, to stand in Parliament according to your beliefs, to really do your due diligence, and to move amendments against legislation when your own leaders have said that they will not accept them. It is very brave to push through for what you believe is the right thing to do, for what you believe is the ethical thing to do and for what you believe would be an improvement to legislation to protect vulnerable people from being exploited. I believe we should have more of that. In this day and age in politics, we need more people who are brave enough to have the courage of their convictions and push through. Notwithstanding that their view might not necessarily be popular, it is still

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relevant. I believe that our society has a great deal of respect for a broad spectrum of views on many matters, in particular, voluntary assisted dying, because it is such a complex area to try to get right.

In conclusion, although this bill has caused me a significant ethical dilemma, I believe people need to be given a choice in extreme circumstances in which their symptoms, pain and suffering cannot be relieved. We heard awful descriptions of people who have either experienced or witnessed that. I believe that should those individuals wish to end their suffering earlier than the disease would otherwise allow, that option needs to be available to them. I do not believe that the protections that are provided in this legislation are sufficient to enable me to vote for it at this time. I flag that if the very sensible amendment moved by the member for Armadale to insert a definition of “palliative care” was successful in the other place and the amended legislation was put before this house, I would vote for it. However, at this time, I cannot vote for legislation that I believe will leave vulnerable people open to exploitation and coercion and potentially accessing voluntary assisted dying against their will.

**DR D.J. HONEY (Cottesloe)** [5.11 pm]: I would also like to speak on the third reading of the Voluntary Assisted Dying Bill 2019. At the outset, I would like to thank the Minister for Health and his advisers for their considerable patience and help during the consideration in detail stage. This is a complex and emotional topic. As a number of members have said, this is the most important bill to come before this Parliament for some decades. I also thank the great majority of members who have been respectful of the contributions of other members in carrying out the difficult work required to ensure proper scrutiny of the bill.

I did not come into this debate with a firm view on this bill; nor did I view the bill based on any particular religious perspective or political or personal affiliation. In fact, had I been asked for my opinion on this topic 18 months ago, before I entered Parliament, it is likely that I would have expressed a view supporting the general concept of voluntary euthanasia. However, in this place, we are not asked to vote on concepts; we are tasked to consider the specific detail in a particular bill. In particular, other than considering whether a bill will achieve its intended outcome, we must consider whether there will be unintended consequences—what may go wrong, whether the bill will enable individuals to go outside the intended scope, and whether the bill will unfairly impact people.

As I said in my second reading contribution, it is not simply a matter of being for or against voluntary euthanasia. It is quite possible to approve of the general concept of voluntary euthanasia, but to disapprove, even strongly, of this bill either in whole or in part. During the second reading debate and consideration in detail, I have been concerned to ensure that vulnerable people are not preyed upon; that decisions are made freely and are properly informed and motivated; that the person who will die has the capacity to make that fatal decision; and that untreated, preventable health conditions do not influence the decision. I have also been concerned to ensure that other people, for their own reasons, ranging from a sense of compassion to a loved one through to personal gain, do not influence the person to make the decision; that family and/or society abandonment of a person does not influence the decision; that the lack of other adequate alternative treatments does not influence the decision; and that people are not compelled to participate in an act or process that they find morally and/or personally offensive. Unfortunately, the answers to a number of these critical questions have been quite unsatisfactory.

My initial review of the bill heightened my concern about these issues, and the subsequent debate and analysis has confirmed my concern about a number of these issues. Perhaps my greatest disappointment has been the minister's refusal to accept even one single amendment. Given the complexity of this bill, it is very unlikely that the bill is perfect. Members have highlighted obvious drafting mistakes that need to be corrected. The minister has refused to consider these appropriate amendments. Members have highlighted unintended consequences and uncertainties in the bill, but the minister has refused to consider any amendments to remove these unintended consequences or uncertainties. It was suggested to me that this had been done to prevent delay between the completion of consideration in detail and the commencement of third reading speeches. It would be extremely disappointing if sensible amendments were ignored simply to try to rush the bill through this place.

I believe that one of the most disturbing aspects of this bill is that it will compel medical practitioners to participate in the voluntary assisted dying process, even if they have a profound personal objection to it. Members would know that the Hippocratic Oath for Australian doctors has been updated by the Australian Medical Association. However, many medical practitioners feel bound by the original oath, which includes the statement —

I will use treatment to help the sick according to my ability and judgment, but never with a view to injury and wrong-doing. Neither will I administer a poison to anybody when asked to do so, nor will I suggest such a course.

I am sure that many people in this place would regard the original oath as an antiquated relic. However, a large number of medical practitioners hold these values dear; and, with all due respect to other people's views, they are equally justified in holding those views. They have dedicated their careers to extending and improving the quality

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of human lives and cannot contemplate being involved in artificially shortening someone's life. As such, they are vehemently opposed to any involvement in the VAD process, and, in particular, to doing anything to enable a person to access the VAD process.

Once a person has asked a medical practitioner to assess them for the voluntary assisted dying process, that medical practitioner is compelled to respond. That is dealt with in clause 17(1), which states that a person may make a request to a medical practitioner for access to voluntary assisted dying. Subclause 2(b) states that the request must be made in person, or, if that is not practicable, in accordance with clause 156(2)(a). Clause 156(2)(a) refers to the means of communication. That includes audiovisual means. I believe that is very important when we consider this bill.

Clause 19 provides that the medical practitioner is required to accept or refuse the first request. Subclause (1) provides that if a first request is made to a medical practitioner, the practitioner must accept or refuse the request. The medical practitioner does not have a choice. Clause 20 provides that the medical practitioner must record the first request and acceptance or refusal. Clause 21(1) provides that within two business days after deciding to accept or refuse the first request, the medical practitioner must complete the approved form and give a copy of it to the board. The initial communication does not need to be in person. If a person requests a medical practitioner to participate in the VAD process, the medical practitioner must respond and may be subject to penalties if they do not respond. They cannot simply excuse themselves from the process. I would be pleased if the minister could tell me in his third reading response that this will not be the case. However, it seems to me that if any person, whether ill or not, were to approach a medical practitioner in any setting, that practitioner would be compelled to participate in the initial stage of the VAD process. From my understanding of the bill, this could be a person who had come into a hospital emergency ward, had walked into the practitioner's surgery, or had even contacted the practitioner remotely by telephone using an audiovisual device such as an iPhone and the FaceTime app. The requirements in clause 17 are very general and do not place any limit on the time or place at which a request may be made.

I will not go through section 156 in detail, because I do not want to take the full time on this contribution, but that refers to communication between patient and practitioner. Subclause (1) states —

***audiovisual communication*** means a method of electronic communication that is designed to allow people to see and hear each other simultaneously.

Under clause 17, the person may make a first request to a medical practitioner. In 17(2)(b), the request must be made in person or, if that is not practical, it must be in accordance with clause 156(2)(a), hence my belief that a request using an application such as a FaceTime app would qualify as a legitimate request. If a medical practitioner fails to comply with any part of the voluntary assisted dying process, they may be subject to the penalties listed in clause 10. This includes a medical practitioner who fundamentally objects to the voluntary assisted dying process and does not wish to direct a person to any information relating to this process. I will not go through clause 10, but it refers to that offence resulting in a charge of professional misconduct or unprofessional conduct. If a medical practitioner fails to return a required form, including a form outlining their objection to participating in the VAD process, they will be subject to the penalty outlined in clause 10, which carries a potential charge of professional misconduct or unprofessional conduct as well as a potential \$10 000 fine. The clause also applies to fines for failure to return a form for various sections of the legislation if a medical practitioner agrees to take part in the VAD process. I believe these very serious penalties are misplaced and could be characterised as bullying a medical practitioner to participate in a process that they are vehemently opposed to, in relation to that, in particular, being required to provide the person who has made that request in whatever form with information allowing them to access VAD. I do not believe medical practitioners who are morally opposed to the process should be compelled under threat of a charge of professional misconduct or unprofessional conduct to hand that information to a person. I believe that is fundamentally wrong.

Members will know that I have a particular concern about the potential for someone to end their life utilising the VAD process due to influence from others and not due to their own will. At the outset, I note that I am very pleased that the minister has indicated that people may raise concerns about these issues directly with the board and are not limited to applying to the State Administrative Tribunal. Although many people here may not be concerned about being required to attend SAT, this would be an intractable barrier for many other people who rarely deal with such bodies. I note that the Minister for Planning has taken this concern very seriously in developing regulations for the recent Strata Titles Act amendments and gone to great lengths to ensure people are very well supported through the SAT process both financially and physically. Maybe that can be a consideration for this legislation.

I cannot understand how any person listening to or reading the compelling contribution from the member for Armadale on why medical practitioners should not be able to suggest VAD to a patient would continue to support

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this possibility being enabled by this bill. Medical practitioners hold a special place in most communities. This is especially the case in smaller and remote communities. The simple reality is that the simple suggestion by a medical practitioner that someone may participate in the VAD process could be the sole reason they make this decision. Members may recall that I raised also the issue of the legal doctrine of presumed undue influence that applies to the interaction of medical practitioners and patients when a personal benefit may arise. In that situation, the law presumes undue influence by the doctor or by the medical practitioner and shifts the burden of proof to that medical practitioner to show they have not unfairly influenced the patient. I am sure this fact must have been in the minds of the Victorian government when it developed its legislation and deliberately excluded the possibility of a medical practitioner raising access to VAD with a patient. This is a major flaw in this legislation and I hope it is corrected by my parliamentary colleagues in the Legislative Council.

Further to the issue of undue influence and coercion, I am greatly concerned that there is no requirement for either the coordinating or consulting practitioner to have any prior knowledge of the patient, nor is there any requirement for a patient's usual medical practitioner to be informed that their patient has entered the VAD process. These issues are compounded by the fact that none of the medical practitioners involved in the VAD process need even physically meet the patient. All communication leading up to the person accessing the poison they will ingest can occur via an audiovisual link. I simply do not share the minister's confidence that subtle issues such as undue influence and coercion can be properly assessed remotely via audiovisual communication. Undue influence and coercion are by their nature usually carried out in private. It requires considerable knowledge of a person to determine whether this has occurred. The fact that a person may go through the entire VAD process and not a single person assessing or assisting in the process need have any prior knowledge of the patient is another significant risk not managed by this bill.

The estimate of probable longevity of a patient is a key qualification for someone to access the VAD process. I remain concerned that neither the coordinating nor the consulting medical practitioner making the estimate of longevity need have any expertise in the terminal illness that afflicts the patient. Whilst I hold the medical community in high regard, I recognise that there is a human diversity of competence and skill in that community. Despite the considerable training that medical practitioners undertake, it is unreasonable to presuppose that they will necessarily have the expert knowledge of identifying how a particular illness is likely to progress and cause death. I understand that either practitioner may seek an expert opinion from a specialist. However, there is no specific requirement for them to do this. I am sure that in the majority of cases, the assessment process will be carried out in good faith and the estimated lifespan will be reasonably accurate. However, this may not always be the case. We have heard several stories in this place about informed estimates of longevity being incorrect by decades.

It has become clear during both the debate in this place and discussions with other people that a number of people, including medical practitioners, believe this bill does not go far enough to liberate access to voluntary euthanasia. Inevitably, and as we have already seen in Australia, some medical practitioners will seek to test the limits of this legislation and the resolve of the government to contain the VAD process inside the legal limits. Given the lack of a specific requirement to involve a practitioner with expertise in a fatal illness, there is a risk of accidental misdiagnosis or deliberate misdiagnosis in that unusual and extreme circumstance. This problem is compounded by the lack of any requirement for the coroner to be informed of the death of a person who has gone through the VAD process to confirm the circumstances leading to the person's death. I understand that the intention of not specifying this requirement is to avoid a longer delay between the death of a person and their burial. However, we do not seem to have similar concerns for people who die in a range of other circumstances that are completely beyond their control, such as people who are murdered or die in motor vehicle accidents or through some other misadventure. Given that a key principle of this bill is that a person accessing the VAD process faces certain death from a terminal illness, surely it would be prudent to have a review process by the coroner to make sure the diagnosis was correct. As I have mentioned before, I am sure that most medical practitioners participating in this process will do so in good faith. However, it could be that some practitioners are consistently poor at diagnosing an illness or longevity. It could also be the case that a very small number of practitioners are deliberately misdiagnosing an illness or estimated longevity to expand the scope of the number of people who can access the VAD process. Ensuring that the coroner is notified of a VAD death and can, as required, conduct an autopsy is a critical safeguard to ensure that the process is operating in the manner intended by the government.

As I mentioned in my second reading speech, very many people are alone and uncared for by anyone they know at the end of their life. It is estimated that 40 per cent of people in aged care do not have a single visitor in a year. Those people are completely abandoned by everyone they know—brothers and sisters, sons and daughters, relatives and friends. Our community needs to do much more to end the desperate loneliness of so many older

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people. I have little doubt that loneliness must be a significant contributing factor for people who wish to end their life earlier than it might otherwise occur.

Palliative care is another key area for concern, in particular because one of the very common justifications for this bill is the great difficulty or impossibility of preventing extreme pain in some people who are dying. There are an appallingly small number of palliative care specialists in Western Australia and many general practitioners do not have enough knowledge in effective pain relief. There is effectively a complete lack of proper palliative care in many regional areas. In my view, even if the concept of voluntary euthanasia is accepted, it ought to be the option of last resort. Until Western Australia has acceptable access to palliative care, we cannot be sure that this inadequacy is not a contributor to people accessing voluntary euthanasia. I recognise that the government is committed to improve palliative care as part of this process, and I am very keen to see how this is implemented, especially in regional areas.

In conclusion, I have not attempted an exhaustive list of concerns with this bill for my third reading contribution, but have sought to highlight some of the major concerns. Legislating for the state to facilitate someone taking their own life or allowing someone else to assist someone taking their own life is an enormously important matter. This bill does not do enough to protect medical practitioners feeling compelled to participate in a process that they may fundamentally object to. It does not do enough to detect undue influence or coercion to participate in the VAD process. It does not do enough to prevent potential lack of expertise leading to misdiagnosis. It does not do enough to resolve issues such as elder loneliness and inadequate palliative care. The protections in this bill are inadequate, and I do not support the bill as it is presented.

In finishing, I wish to make a recognition of the member for Girrawheen, because I wish to especially recognise her contribution to the bill in this place, recognising that many members have made significant contribution. It does not require so much bravery to go along with the majority. It is much harder to go against the majority, especially when the great majority of people in your own party hold an opposite point of view. The member for Girrawheen has been tireless during this debate. She has been in the chamber for the great majority of the debate and has continued to participate and move amendments to the bill. I wish to place on the record my admiration for the considerable contribution she has made to the debate of this bill.

**MR D.T. REDMAN (Warren–Blackwood)** [5.32 pm]: I rise to talk to the third reading of the Voluntary Assisted Dying Bill 2019. I start with a bit of a compliment to the house for the way everyone has carried out this debate. It has been long, with late nights and early mornings, and testy for a very, very significant bill, in fact one of the most significant bills, if not the most significant, I have been a part of in nearly 15 years in this place. I thought everyone carried themselves admirably. They did the right thing. They quizzed the bill, as they rightly should have. The maturity with which the house undertook this debate is to be commended. There was no guillotine of anything, and there rightly should not have been any guillotining of debate on something as significant as this bill.

**Mr R.H. Cook:** There was one gag. The member for Armadale gagged his own amendment.

**Mr D.T. REDMAN:** Yes, he gagged himself. He is probably the only person in the chamber who could have done that! I recall that; the minister is right. I apologise for getting that wrong. I thought there were lots of appropriate questions, as there rightly should have been for something as significant as this bill.

I started this process, right from when this issue was put up, with my in-principle support for the voluntary assisted dying process. In my contribution to the second reading, I highlighted that the only qualifier to that was going through consideration in detail and fully understanding the mechanics of the bill, to listen to and get answers to questions, to ask questions, and to ensure that all the checks and balances that the community expects to be in a bill as significant as this are actually there. This might be a funny way of looking at things, but one of the best tests for a bill such as this is to listen to those who are opposed to it. They will be the people who put it to the greatest test, because they will draw out all the issues and scenarios that might play out. They will quiz the government, in this case the health minister, about the various aspects of the bill and how it works to see whether there are any cracks in it. I think the efforts of those who opposed the bill have supported the robustness of it. I think that is a really important part of the process.

I gave three points in my second reading contribution that were important to me in supporting this bill. The first, which I thought was compelling, was the level of public support. My assessment of the level of support in my electorate reflected that. Among people who gave feedback to me, whether while walking the streets of my electorate or through social media, emails and the like, there was a massive amount of support, so the expectation in my electorate is that I will support and pass this bill.

None of us can help but bring our family experiences to the table. As the house well knows, I have had some experiences in my family that I was able to bring to the table. I did not necessarily go through them directly, but



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someone very close to me went through very, very difficult circumstances. We cannot help reflect on those circumstances and the views of family members who went through the very difficult times that they did and what they brought to this debate. The third group I want to mention is the people who are affected. They are people who have a terminal illness and who in all likelihood will die in six months. As we know, the bill highlights that if a person has a neurodegenerative disease, people have 12 months. They also have to be going through insufferable pain that cannot be relieved. Those individuals have a right to be heard in this debate. The examples that were brought to us all, not only in this chamber, but outside of it through various forums, have been compelling to me and helped me support people having the choice. Some may not choose to take that path, but some would like to have the choice to take that path.

I will mention another occasion that was fairly significant to me, and I did not mention it in my contribution to the second reading debate. I remember when this issue was first taken to the Joint Select Committee on End of Life Choices. As members know, the National Party was represented by Hon Colin Holt on that committee. I was sitting next to Colin at dinner. We had a light conversation about the legislation, the scenarios and how it may play out. He gave me an example. He said to consider a circumstance in which someone is in hospital—we have all been there—tubes hanging out of our noses, drips in our arms and machines in the background running our blood pressure and heart beat. It is largely a foreign place for all of us. You are going through a terrible scenario and are approaching death at a particular point in time. Consider that scenario and passing away in that environment. Compare that with choosing a location of your choice, whether it be your home or another place of significance to you—making a choice of having friends around you and anyone you choose to be a part of that. You can choose the occasion to bring forward the death expected to occur in six months. I thought it was quite significant. It was quite a significant point to make. Having a choice like that between an unfriendly environment that you do not like, that you do not want to be a part of and with people you do not know, and a place of your choice with the people around you of your choice was fairly significant in setting up some of the first views in my mind of how this legislation might play out.

Members moved a number of amendments. I expect, as others do, that there may be some amendments that happen in the other house, in which case they will come back to our chamber for consideration. The one amendment that the Premier gave a commitment to consider in the upper house was on the issue of information. I think the amendments were to clauses 21 and 39. Clause 21 is about information reports in the first assessment and clause 39 is about information in the consulting assessment. The information is provided to the board. The amendment talked about having that additional information provided to the patient, the person concerned. That amendment came from the Leader of the Opposition. I think the Premier made the point at the time that, on the surface, it has some merit. I know that there was opposition to supporting that amendment in this place and there were a range of reasons for that, but I thought it had merit. If that amendment is made in the upper house and comes back here, it will make a bit of sense to me. It was not a show stopper for the passage of this legislation in this house for me, but I think it had merit.

The other test with this legislation was whether there were any drafting errors. It is a complex bill that interacts with other bits of legislation. There is a whole range of things on which it would be easy to make a mistake. I think the only genuine mistake that was identified concerned clause 26, in that a different word was used in the bill to the word used in the explanatory memorandum. The bill had “or” and the explanatory memorandum had “and”—I think the Leader of the Opposition highlighted that. When I looked at it, the wording in the bill was the right one for me, so that made sense. That, again, was not a show-stopping mistake. Nevertheless, I assume that it will be fixed by the time the bill gets to the upper house. In a book of words like this, that was the only thing that was identified that might have been off the mark. I give credit to those who drafted this bill; it is complex, difficult and emotive, and they had to get it right. I think the bill stood up to the debate in this place, which is a measure of the effort that went into it.

New members of this place—those who were elected this term—will not deal with a piece of legislation like this again. It is the sort of stuff that happens once in your time in this place. In my 15 years, it is the most significant piece of legislation I have been a part of. Take notes, write it down in your memoirs or do whatever you like, because it will not happen again. Members do not get the opportunity too often to put in the level of effort that goes into a bill like this. This bill offers the Western Australian community the ability to choose voluntary assisted dying. The level of robustness that needs to go into the legislation to ensure that it is right when it leaves this place just does not happen very often. As others have said, when the debate on this bill is finished—I dearly hope it gets through the other place—there will be those in the community who will think it has gone slightly too far, and those who will think that it has not gone far enough. One of the challenges the government had in putting up this legislation was in pitching it at a level at which it would successfully pass through this place, so that, once it gets through two houses of Parliament, the option is available and it meets community expectations. I think it has been

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pitched right. If there had been overreach, it probably would not have got the support of this house, and certainly would not get the support of the other house. I think the pitch has been appropriate.

I will make one more point about the Legislative Council. If the bill does not get through the Legislative Council, with or without amendment, we can expect that this sort of legislation will not be back for a decade. We just do not put this sort of legislation through this place every year. For those who are supportive of it, we dearly hope it gets through with the scrutiny that it deserves, but if it does not, it certainly will not be back in my time in this place.

In closing, I can absolutely look my electorate in the eye and say with a clear conscience that I have acted here in their interests to support a piece of legislation that they want, and that the legislation is robust. I commend the bill to the house.

**MR A. KRSTICEVIC (Carine)** [5.43 pm]: I also rise to make a contribution on the third reading of the Voluntary Assisted Dying Bill 2019. I will start by acknowledging all the hard work that was undertaken by everybody during the consideration in detail stage. I commend the people who genuinely participated in that debate and took an interest in every aspect of the bill for going through that process and being so precise and concise in the way in which they went through it. I would also like to acknowledge the great work done particularly by the Labor members for Girrawheen and Armadale, who moved a number of very sensible amendments to this legislation that I strongly supported and hoped would be able to get over the line so that the legislation could be better than it currently is and so that its flaws, which I will go through very briefly, could have been corrected.

As legislators, it is incumbent to always act in the best interests of all our constituents and the people of Western Australia during the course of our debates. I initially struggled to come to a firm position on this issue; however, it was very easy to decide on a position once the legislation was introduced into the Parliament, and especially after the thorough consideration in detail stage raised numerous issues. I can advise everybody that all the concerns I raised in my contribution to the second reading debate have been confirmed as valid. As such, I will not be changing my initial position on the bill. Unfortunately, the government has chosen to ignore all the reasonable amendments that were put forward to this Parliament. I assume that most, if not all, will be accepted in the Legislative Council and that the bill may well find its way back here. It is very disappointing that we could not fix those problems before the bill gets to the Council. This house has been treated with a level of disrespect, in that we are viewed as not being capable enough to make those amendments and must leave it up to the other place.

I still have a number of very serious concerns with this legislation, including the fact that many people suffering from a terminal illness who do not qualify to access euthanasia or high-quality palliative care will commit suicide because their needs will be ignored by this legislation. Even without taking into account the future strong growth in our ageing population, it is evident that this government will never be willing to invest the required amount of money in both palliative care and the health system generally. It is still difficult to reconcile the giant leap we are taking here today when we are coming from a very low base, rather than taking an incremental approach by firstly identifying the gaps and then closing them. I know people say that there are 102 protections in the legislation. However, those of us in this place who have taken the time to look at them properly know that many are just eligibility criteria and that there are very few protections.

The Victorian legislation banned doctor steering, which means that a doctor cannot start the conversation around euthanasia if the patient has not raised it first. Unfortunately, our legislation does not provide this critical protection to vulnerable Western Australians. Alarming, allowing doctors to initiate conversations about euthanasia will put vulnerable patients at risk of undue influence. Inexperienced, incompetent or unscrupulous doctors could lead patients down an extremely dangerous and possibly unnecessary path. I realise that, historically, very few doctors have fallen into that category; however, some doctors have fallen into that category. It is incumbent on us as legislators to make sure that we protect those who are most vulnerable. Ultimately, doctors will be able to steer their patients towards euthanasia and assisted suicide as opposed to palliative care. It is even possible that loved ones, and not the patient, may ask a doctor to start the conversation. Loved ones may also be present during the first discussion and encourage the patient to seriously consider the doctor's advice, as "the doctor knows best". The Western Australian Ministerial Expert Panel on Voluntary Assisted Dying acknowledged that up to 60 per cent of Australians have low levels of individual health literacy, meaning that a large number of patients are completely reliant upon their doctors to provide guidance, support and advice on their health decisions. Unfortunately, the bill does not even require the doctor to be specialised in a person's illness or possible areas of treatment for them to make a decision about a patient's request for euthanasia.

During the brief life of the Northern Territory legislation, there was a valid requirement for everyone to undertake a psychiatric assessment. Again, our legislation does not have this critical requirement to protect people when they

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are at their most vulnerable. I still have serious concerns about the physical security of the medication once it is given to the patient, not to mention the possible pressure the person might get from family members to end their life sooner rather than later. There is also the possibility of the medication falling into the wrong hands. Multicultural considerations have also not been properly taken into consideration. As we know, when people from non-English speaking backgrounds age, they generally revert to their native language and customs, and thus are more vulnerable than most to both coercion and confusion.

The principle of suffering is still confusing to me, because it does not just reflect the principle of physical pain but also seems to include things like feelings of demoralisation, depression, stress, sadness, giving up, loneliness and numerous other possibilities, effectively meaning that anything can be characterised as suffering. Doctor shopping and practices specialising in euthanasia also concern me. These behaviours have taken place and will always take place where this legislation exists. Doctor shopping is a well-entrenched practice in our society. We also know that doctors can get things completely wrong, such as when guessing the length of time someone has left to live.

Elder abuse is a serious issue in this state. The commonwealth inquiry into elder abuse has indicated that there are as many as 75 000 victims of elder abuse in Western Australia, not to mention the fact that around 40 per cent of people in aged care never get a visitor. Some of these people could undoubtedly become victims of this legislation. This is something I am not willing to risk.

I am also concerned about how it will be decided whether someone has capacity, and why a thorough mental health assessment will not be undertaken in every situation to make sure everything is above board. It is well documented that some people without capacity can from time to time present as if they do have it. The minister has presented a bill that I consider to be flawed in many respects. My responsibility as a legislator is to make sure that the interests of all Western Australians are protected and that they are not exploited by the government or others in our community. Since the minister is not prepared to fix the serious concerns raised in my contribution to the second reading debate, I will have to vote against this bill and hope that the Legislative Council will get it right.

**MR K.M. O'DONNELL (Kalgoorlie)** [5.50 pm]: I, too, wish to rise for a short moment and congratulate all those involved in bringing the Voluntary Assisted Dying Bill 2019 to Parliament. I can agree with various members that had various concerns, but I think the spirit of the bill is why I am voting with the government on this. I have had a very good journey with this bill from when it first started. I met some very important people and some very good, decent people, including Belinda Teh, Andrew Denton and Angela Miller. I also wish to acknowledge the member for Girrawheen for all her comments, questions and proposed amendments; the member for Cannington; the member for Armadale; and, I think, the member for Midland. I thank my party for giving us a conscience vote. If it was not a conscience vote, I would still be going over to the other side on this.

I mentioned during the second reading debate that Andrew Denton made a comment about how, when he saw that this bill was being debated in the eastern states, party members from both sides turned on each other in Parliament when they were talking. He said that you need to support each other and you need to be caring and thoughtful and respect other people's thoughts. At times, I dare say some people stood here and said things and some people sneered, and some people made comments, but that is their right. Under the conscience vote it is good that they can get up and have their say. The member for Girrawheen was never daunted. I was disappointed, and I will say this, because I am looking from this side of the chamber, but in my opinion I thought the Attorney General, when he was being questioned by the member for Girrawheen, was disrespectful. I thought, "She's quite entitled to ask questions", and I just thought the way he spoke back to her was belittling, and I thought that was disappointing. The member for Girrawheen is a good person, and I do hope that her own party still stands by her. I hope it does not dump her; she is a decent person.

The member for South Perth was very vocal on our side.

**Dr M.D. Nahan:** Is he a nice person?

**Dr D.J. Honey:** Not really!

**Mr K.M. O'DONNELL:** He is sitting over there!

There were not a lot of vocal ones, but I commend the member. I remember when he went on the committee, he stood up in our party room and said —

**Mr Z.R.F. Kirkup** interjected.

**Mr K.M. O'DONNELL:** Sorry! Rookie mistake; I apologise. He never said anything! I was never there! I never heard anything!

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Overall, I reckon this was handled well by both sides of the house. I like how our side asked questions, similar to the member for Girrawheen and the member for Cannington. With regard to the members for Girrawheen, Cannington, Armadale and Midland, it was like being back playing in a combined school sporting team. One minute I am playing against Hale or Wesley, next minute I am training midweek in the state squad with players from both schools. When the member for Cannington got up and spoke, even though I am not on his side even on this bill, I enjoyed listening to how he questioned the minister, and I took note.

I would like to repeat that I have reservations about the death certificate; I really, really do. I struggle with the idea that we put on the death certificate the cause of death when the cancer did not cause the death; the voluntary assisted dying caused the actual death. I still firmly believe that that is what should be on the death certificate as well; whether it is abbreviated or whether we refer to it by a different name, I still think we should put that on the death certificate. The minister said that people had reservations, and I think religious concerns—their own beliefs and so on—but we should not be falsifying a document. Maybe “falsifying” is the wrong term, but if the person submitted to voluntary assisted dying, that should be included on the actual death certificate, along with the other cause of death, whether it is cancer or any other illness.

I still support the government on this legislation. If there have to be more amendments, it can come back another time, and that is fine, but I wish it luck in the Parliament.

**DR M.D. NAHAN (Riverton)** [5.57 pm]: I would like to make a contribution to the third reading debate on the Voluntary Assisted Dying Bill 2019. As with many other people in the house, I think the debate has, to a large extent, been respectful, thorough and detailed, and appropriately so. This issue gives rise to a great deal of contention—appropriately so—and emotion on both sides; given the nature of the subject, you would not expect anything different. As I said in my contribution to the second reading debate, I praise the government firstly for bringing the debate forward on voluntary assisted dying, and for the wider debate it is engendering in the community about death. It is important. It took a lot of effort to bring this forward, so to all the range of people from the various committees that have been involved in preparing this draft and the papers that came forward to it, I congratulate them.

I came to this debate with some trepidation, mainly ethically. It was not because I am under the control of some powerbroker—I am not—or because of a religious issue, but because I recognise that we are going into the unknown; we are crossing the Rubicon. A fundamental ethical value of civilised society is: do not kill. We have seen uncivilised societies that have lost touch with that. I am not being over-dramatic here. Secondly, the implementers of this will be our doctors. We are blessed. Our medical profession, particularly our GPs and specialists, are some of the best in the world and well trained, but they are at the forefront, and many of them were very concerned about this legislation because, as the member for Cottesloe indicated, it changes and goes against the established Hippocratic oath—that is, always help; never hurt.

As I indicated in my contribution to the second reading debate, because we reach the Rubicon, it does not mean we do not cross it; but we must make sure we know where we are going and put restrictions on the expansion of the boundaries of human behaviour. That is what this bill is all about. As we all have, I have some personal experience, but I have tried to not use my personal experiences as general examples. They might be case studies, but they are not generalities. I indicated in my contribution to the second reading debate that I had three sets of problems, which is why I voted against the second reading. I wanted to go through consideration in detail, and I would like to thank some members who made consideration in detail a learning experience for me, particularly the member for Girrawheen, who had obviously gone through a great deal of work on the Victorian and international experiences of this sort of legislation, and she highlighted a number of issues.

*Sitting suspended from 6.00 to 7.00 pm*

**Dr M.D. NAHAN:** I am glad that there are some people in the room following the dinner break, and I will continue. I want to reiterate that I support everybody who has made a contribution to this debate. Understandably, this is a contentious issue. I received quite a bit of feedback both before the debate and more recently from all sorts of people in my electorate, and, I might add, outside my electorate, and there has been a tendency for people to be concerned about us dragging on the debate for too long. Let me reassure those people of two things. First, if the bill passes, it will come into effect on 1 July 2021 because of the preparations needed. Our debate has not slowed up the enactment or, indeed, the implementation of the legislation at all. More importantly, as the member for Cottesloe said, whatever members' views are on voluntary assisted dying, they have to make sure that the bill will work and that they understand it—that is why we are here.

To my views: in my contribution to the second reading debate, I stated that if the bill would do what most people perceive it aims to do, I would support it, but I do not think it will. Let me be more precise. Most people think that

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the bill will address situations in which people are on their deathbed and in pain because palliative care does not work or they have a neurological disease that is equivalent to that. If the bill would do just that precisely, I would support it. I had concerns before the consideration in detail stage that the legislation would go beyond that, and our consideration in detail of the bill showed me that it would. Secondly, I said that I was concerned about not just the lack of investment in palliative care, which is still a significant and pre-emptive concern from my perspective, but also that, as part of the legislation, palliative care should be a necessary precursor to VAD. Palliative care should have been defined widely in the legislation and available to patients. Patients should have availed themselves of palliative care before they could access the VAD process, but that is not necessarily the case. Thirdly, I am concerned—we went through this in great detail—about the chance for subtle abuse.

These issues of the lack of palliative care, the risk of abuse and people availing themselves of VAD before they are in physical pain and before palliative care no longer works will be rare, but we are dealing with death. Although it will be rare, even a few examples are too many. We debated the bill. For me, the flaw in the bill is that primarily, even though access to palliative care has eligibility criteria, we did not define palliative care and we did not make it a necessary precursor for people to take before availing themselves of VAD. I will go through that. Also, the definition of suffering is left up to the patient. I guess that follows from the primary objective of the legislation—that is, patient choice. In overseas examples—we do not know about Victoria yet, because it has had only one case—the majority of people availing themselves of the equivalent of VAD do so not because palliative care has failed or they are in deep pain and palliative care is not working, but because of what is called existential trauma; that is, they have been given a death sentence and they are in trauma. I simply cannot accept that VAD should be used to address anxiety and existential trauma; I just cannot accept that. We have heard of too many cases in which life is uncertain, life is short, life is valuable—you do not take pre-emptive action before you have to. That is my position. People will disagree with me, but I think we are going too far on this legislation.

The minister kindly provided some material on funding for palliative care. The government has increased the expenditure for palliative care over the forward estimates by around \$30 million. We acknowledge that. The data provided does not include the expenditure in hospitals. The minister identified that that funding was hard to ascertain as separate. I accept that. However, all the evidence I have received from my discussions with palliative care specialists—in the private and public sectors, in the home and in hospitals—shows that there is inadequate access to palliative care. I would think that before the government goes down the path of legislating VAD, it would ensure in parallel that palliative care was adequately provided. In other words, there would be a dual-path process of preparing for, debating and identifying access to VAD, and it would be the same process for accessing palliative care. I believe the government has now undertaken a pathway to improve and define palliative care. I congratulate the government on that, but we are here voting on a bill today, not down the track. I do not think the government has performed adequately on palliative care.

This is the most important issue for me. Most of us live in loving families and have family doctors whom we can trust. I think that is the norm, but it is not always the case. I would like to read out one of a range of statements on this issue provided to me by a Western Australian doctor. I do not have permission to give this doctor's name yet, but he has worked for decades as a general practitioner, dealing with all sorts of patients, but particularly people who are old and dying. This is his experience; he has spent his life dealing with this. From all of what he says, he is an excellent doctor. If all the doctors who would be dealing with VAD were like him, my concerns would be greatly lessened. He states that the VAD legislation will place a burden on some of the most vulnerable members of our society to take their own life and remove the self-perceived burden they place on society and family for advanced end of life. He says that although sanctions can be, and he thinks have been weakly, enshrined in the legislation, it is not possible to remove the pressure that these individuals will feel. He states that he knows that they feel like a burden, because he has spoken to them. He says that even if it is not external pressure that is placed on them, they put pressure on themselves, and external pressures can be extremely subtle—a look, a word, a suggestion. This will happen in a quiet room with no witnesses. It may be a person with little family support—we have heard that that is unfortunately common in our society—or dysfunctional relationships. It is not right to impose even the possibility of this decision on the vast bulk of the terminally ill who would not otherwise consider it. This is something that we in this house deal with all the time, on a range of issues—people acting improperly, as we define it. I have personal experience and advice that people, particularly at the end of their lives, when they are old, feel themselves to be a burden on society, their family or the community, and they take it upon themselves to take drastic action to end that burdensome association. If voluntary assisted dying is provided to these people without the necessary counselling identifying their feelings of inadequacy and addressing them, it is improper. The doctor I just referred to goes on at length in his article about how he identifies these feelings of inadequacy. He knows his patients. He discusses it with the family, which is often the source of it. Unfortunately, in life, many of us do not have that family. We do not have functional relationships. We do not have a relationship with a doctor,

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and therefore it is incumbent on this legislation to have other supported processes to scrutinise and ensure that there is not undue influence, whether external or internal, for people to perceive themselves to be a burden on themselves and the community. I do not think the legislation has gone far enough. I cannot support that; it should have been done. We are not looking for perfection here, but we should have gone much further. Again, people tell me that these will be the exceptions, and they will be, but we are dealing with premature death, and exceptions should be the focus.

The bill has been structured in such a way as to take voluntary assisted dying into the norm of medical activity. That is a fundamental change for the whole medical system in our society. Therefore, in my view it should be really restricted to where it has been promoted for most of the advocates, but we have gone beyond that. This bill goes beyond what is in Oregon and in Victoria. One of the things that hit me most was that when I talk to people, they think it is about a person on their deathbed, when palliative care is not working, and the disease is incurable. However, one of the changes of this bill from the Victorian legislation is that in Victoria, the disease is required to be essentially incurable—it is a death penalty. This bill does not have that. We could come up with a hypothetical. Someone could have a disease that would kill them in six months, but not if they did something about it. This is too wide open for me and, I think, too wide open for most people in the community. It should be narrowed. The Leader of the Opposition indicated that if the bill came back from the other place, under certain conditions, she would support it. I do not expect that to happen in this case. We have gone through at great length and in detail my concerns with it, and the government, with all due respect, chose to take a different pathway. If it did change—if the government narrowed it down, invested more in palliative care and put greater effort into identifying and, indeed, scrutinising patients who wanted VAD to make sure there was no internal or external coercion upon them—I would support the bill. I do not expect it, and therefore I will vote against the bill at its third reading.

**MR R.S. LOVE (Moore)** [7.14 pm]: In discussing the third reading of the Voluntary Assisted Dying Bill 2019, I want to start off by saying how impressed I was with the operation of the Parliament as a group of people throughout this whole process, in terms of the spirit in which the debate was conducted. Generally speaking, the debate was conducted in a very respectful manner. I would like to pay some tribute to the member for Darling Range, because she has been acting as the Whip for people who initially voted against this bill. It is a bit unusual, because it does not fall along traditional party lines. We heard the Premier during his speech talking about some sort of a party line on this, and that is completely erroneous. I know that some members of the Liberal Party, for instance, voted in favour of the government on every amendment, and other members of the Liberal Party voted against every amendment. Similarly, in the National Party, some members have not yet voted on any of the substantive matters, but where they have, some, such as me, have voted against the bill, and others have voted for it. It is certainly not something that is being conducted along party lines. I thought it was a bit unfortunate that the Premier spoke that way in his third reading contribution, because that is not the way the bill has been dealt with, in my view, generally.

It was very refreshing, and very impressive, to see someone of the eminence of Malcolm McCusker sitting in the adviser's chair. It does not happen every day that we see a Queen's Counsel, a former Governor, recognised nationally for his contribution to the community, being involved. I know he was involved deeply with the ministerial expert panel as well. Even though I have opposed the bill at different stages, I want to give my thanks to those who have been involved in the discussion and in advising the various ministers who have sat in the chair.

I know the member for Kalgoorlie spoke of this, but I did think some of the comments from the Attorney General were at times a little unhelpful and perhaps a little aggressive, and were not really aimed at the spirit of what we were trying to do, which was to interrogate the legislation through the consideration in detail stage. I know that members spent many hours asking questions, to such an extent that, by the time they had finished on every matter, everyone had had their say. I think I was actually to some extent a passenger through a lot of the consideration in detail, because I was listening to the excellent contributions from people such as the member for Hillarys, the member for Riverton and the member for Cottesloe throughout the discussion. A range of people made excellent contributions throughout.

I want to pay special regard and tribute to the member for Girrawheen, and the member for Armadale, who made a considerable contribution throughout consideration in detail on this matter. It cannot be easy to do that when only a handful of people in that party are opposed to the bill. They showed a level of personal conviction and strength, although I think the member for Armadale supported the bill in its entirety, but wished to see some amendments. I do not think that was the case for the member for Girrawheen, but they showed that they were willing to stand up for what they believed was right.

I know that we are here as representatives of our communities, although I do not think we actually slavishly follow what public opinion might be. We are elected because people think that we are the people they want to represent

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their area. It does not mean, I believe, that we are slaves to an opinion poll on every issue. As the member for Scarborough, the Leader of the Opposition, mentioned, when we look at the way the house voted in the end, it is pretty much how the community has considered these matters. There is no doubt that most people in the community support a form of voluntary assisted dying; that is not disputed, but what may be disputed is the merits of the particular bill we have before us.

A couple of matters that I would like to raise were, I thought, disappointing. First, the government did not make any amendments to the bill. I do not believe that any legislation when it is presented to the house is perfect, even when it is drafted by people of the eminence of the aforementioned Malcolm McCusker. That does not necessarily mean that it cannot be improved. I think the view that amendments can happen only in the other house, because somehow it is imbued with some greater ability, is wrong. In this situation, we have a bill that is very open and we have people with considerable intellect on both sides, who are able to discuss the issues and point out the deficiencies, which should be acted on. I will highlight a couple of those deficiencies. I know others have gone through a whole list of them; for instance, the possible conflict with federal legislation on telecommunications, leading to the encouragement of suicide, and that this may possibly be captured within that, as the Victorian government feels that its legislation may be in that situation. But, because I do not really support the concept of assisted dying in this form, I am not going to argue the merits of country people being able to access it the same as everybody else, because I do not think I want to go down that path.

Nonetheless, I think the government is being a bit naive if it thinks that this is not going to be a problem when it comes to putting this legislation into place. I think country people will be disadvantaged in the area of palliative care in particular. The member for Girrawheen tried to move an amendment to have palliative care defined in the bill, as it is not actually defined. If “palliative care” is not defined in the principles or the bill, I do not know how we can assure ourselves that everybody in this state who may indicate that they will apply for voluntary assisted dying has been given proper palliative care. If there is no definition of what constitutes palliative care, or an actual requirement for that to be provided, I think that is a very serious omission, especially for regional people. The further we go from the centre, the more difficult it is to provide any service. Palliative care is one of those services that I think is particularly difficult to access in regional areas, and I know this from the experiences that my constituents have brought to me over many years.

Every year that I have been in Parliament, I have had examples of people who have had difficulty accessing pain relief and proper palliative care in their areas. It is very real and it is not going to go away in a hurry. I do not think that I, or anybody from regional areas, would like to see people decide to access the VAD process because they are in an extreme amount of pain simply because they have not been looked after properly. That is a huge issue. The member for Girrawheen tried very hard and very valiantly to put in place a definition of palliative care, but the definition did not actually ensure that palliative care would be available. I was not supportive of the definition that she put forward. I thought it was a little bit restricted so I did not personally support that measure, not because I do not think there should not be a definition; I just did not agree with the definition. Nonetheless, it needs to be interrogated and inserted into the legislation. If the government is of the view that it is not going to accept any amendments in this house—and it did not—I hope that that is not the up-front position of the Legislative Council. Some of these measures are quite sensible and necessary, and if the government is going to make sure that this legislation does what it proclaims it will, those measures should be put in place.

Another matter raised throughout the debate that I thought had a lot of merit and a very compelling argument was made for it was the member for Armadale’s very reasonable amendment in proposed new clause 9A that registered health practitioners are not to initiate a discussion about voluntary assisted dying. I have a lot of respect for the member for Armadale. I think he has a very fine mind, and he has a personal reason for this. In these types of circumstances, personal reasons help to inform members about what might be the best way forward. His amendment was about ensuring that registered health practitioners did not initiate discussion about voluntary assisted dying. Again, I thought he put a very strong argument for why that should be accepted by the government and the house. Unfortunately, again, it was opposed, and it was not successful. I note that he and a couple of other members of the Labor Party voted that way. I hope that when the bill moves to the other house and this is discussed that that amendment will be reconsidered and, perhaps, put in place. I think it is a real danger that when we have such a tool at our disposal, we do not suggest a course of action that someone may not have, on their own volition, wanted to consider. The member for Armadale highlighted that certain people with certain disabilities, for instance, might be highly susceptible to the suggestion that that is a good way to go. Therefore, someone such as a medical practitioner, who is very powerful in their lives, could put that proposition to the person with disabilities, and then the person decides that that is the way they will go. I agree with member for Armadale: that is not something that we necessarily need to see in the legislation. It is not in the Victorian legislation. I did not hear, even after the

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discussion here, a convincing argument for why this legislation is different from Victoria. I do not think that the legislation that the government has put forward is perfect, but it obviously does because it does not want to see any amendments to it. I think it is an act of hubris to believe that anything that is written cannot be improved. We sat through many, many hours of this debate and discussion, a whole range of ideas were put forward and every one of them was rejected. I do not think that the government can claim that the people who are putting these amendments forward are necessarily acting with malicious intent and trying to disrupt what the government wishes to achieve. I think in some cases, and certainly in the member for Armadale's case—he is someone who has a very fine legal mind; a personal understanding of the issue—he supported the bill, but did not support that particular provision. Members from the government's own party put forward amendments, which were just rejected. I find that very, very hard to understand.

I suggest that the government look at that issue and at palliative care again. I am still of the view that those are the two issues that are very wrong in this bill. Apart from the fact that I will not support the bill in its entirety, those two issues, I think, are glaring and could be addressed. Members of the Labor Party put forward amendments to help address those issues, but the amendments were not considered or accepted by the government. I hope that when the bill goes to the other place, those amendments will be re-interrogated, and palliative care, especially, will be looked at. As a regional person, there is a twofold benefit in that: it will improve this bill and it will improve the lives and the ending of lives for not only the patients but also their families. There is an enormous amount of distress on families when they see their loved ones suffering, when they have to drive them to and fro, here, there and everywhere to access care that should be available approximate to where they live. That needs to be urgently addressed. I know the government has made its commitment to palliative care in the budget, but, unfortunately, I am not seeing too much strategic or structural change that will actually make a difference to the palliative care that is provided in regional Western Australia. We will probably talk more about that in other forums, and the Nationals WA have a notice of motion on the notice paper for private members' business tomorrow, during which I am sure some of these issues of palliative care will be interrogated further. As regional members, we are very, very mindful of the disparity in the level of care for regional people and people in the urban area.

In conclusion, I thank the Minister for Health for his patience when he was sitting at the table. I am not sure whether I would thank the Attorney General for his patience. Occasionally the Premier was there, and I think he did a pretty good job for someone who is not the lead speaker on this issue in explaining and trying to show respect to members who put forward their points. I am still trying to fathom the reason the house sat until 5.30 am on one occasion. I do not understand that. There was discussion taking place outside this chamber by certain members of this place who went out and criticised members for properly examining the issues and interrogating the clauses one by one. It is the right of and the expectation on this chamber that we do that. I thought it was very wrong for members opposite to criticise us for doing our job, and to try to tire us out by sitting to 5.30 am. I make a confession: I went home and had a little sleep. The member for Warren–Blackwood stayed here all night. I went home for a few hours and had a kip, because I knew I had to drive to Geraldton the next morning, and, in all honesty, I could not hop in the car at six o'clock in the morning and drive to Geraldton after having no sleep whatsoever. If I did that, I think I might have been another statistic on the Indian Ocean Drive. That was not going to happen, so, reluctantly, I went home and had a few hours' sleep. I do not think that is a proper way to run the process of the house. I know that senior members of staff are expected to stay for these types of occasions, and it probably did not cost the Parliament that much money, but I question the value of it in terms of decision-making, a considered discussion and a rational process going forward. I question why the government would expect people to sit here from nine in the morning through to 5.30 the next morning. That is just silly. There is not another industry where we would do that, except, perhaps, in medicine, because we hear of the horrendous hours that they work.

**Mr R.H. Cook:** Member, I bumped into one of our former colleagues. I didn't share time with him in the Parliament, but he was here for a function. He said, "Look at you mob! You sit late one night; all of a sudden, you consider yourself hard done by. We used to do that all the time!"

**Mr R.S. LOVE:** Yes, and I would accept that as a really good thing if it were not for the pyjama party that was going on upstairs, and the fact that Labor Party members were not here for much of the discussion. On this side, there were a few members. The ministers were taking it in turns. I think the whole idea was to tire this lot out so that they would all go to sleep, and the government would get through the bill quickly. It did not work, and people continued to do their very best to interrogate these clauses one by one by one. If that was the intent of the late sitting, it was a failure on the part of whoever intended that to happen. I do not think it was a great way to do things. I think we are going to finish tonight pretty much early. After all that, this will go to the other house at the end of September as always anticipated, I think. If we look at the sitting schedules, it was always intended that we would finish at the end of September. If we had finished on Thursday, it would not really have mattered that much; we would still have got it to the upper house so they can look at it first thing in October, which was surely



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what the government was trying to do. It was completely unnecessary! The government could have knocked it off at two o'clock or something, but 5.30 am—come on! There was no sense in it.

**Mr D.A. Templeman:** Where's the strength in you? Where is it?

**Mr R.S. LOVE:** I do not think it is a matter of strength. That is the sort of talk we used to hear in the bush: "We've only had six cans and we'll drive down the road." That is not actually the proper way to conduct yourself. The government did not show respect to the members of Parliament. To all those on the other side who were upstairs asleep, they were not paying much attention to what was happening anyway, so what was the point? The Minister for Health was not even here to listen to the debate. I know that the debate took place, and we had alternative ministers, but the Minister for Health was the lead, and it would have been really good if he had been sitting there throughout the consideration in detail. He would have heard everything; he would have been able to inform his department of what was needed. That would have been the proper way to do things—surely? Can the Minister for Local Government imagine the City of Joondalup council sitting until 5.30 in the morning?

**Mr D.A. Templeman:** Some of them sit quite late.

**Mr R.S. LOVE:** I am sure they do, but they are probably not discussing much of any interest by then. Anyway, I do not want us to be here until midnight tonight. I think I am now running into a situation in which I might be threatening to do to the government what it did to the people who were not supporting it by making them stay around. Maybe I might just do that. I have another nine minutes. I am sure the Minister for Health would like to go home. Look, I think that has made the point. I hope that when this goes to the other place, it gives it due regard, and there is no sense of rush on this. This is landmark legislation for Western Australia. The idea that it needs to be rushed through to some predetermined timetable is a bit unseemly, given the gravity of the matter being discussed. Although I think that in general terms the whole debate has been conducted very respectfully, that was the only issue of conduct that I would raise—pushing people to the point of exhaustion was unnecessary and in the end unproductive and not a good process for Parliament to consider in the future.

In conclusion, I did not support this bill in the second reading. I think the fact that the government refused to accept any amendments, including some very reasonable amendments, has not done anything to allay my concerns about the bill. So if this goes to a division, I will probably be voting in the same manner as I did in the second reading stage. However, in doing that, I bear no judgement to pass on anyone who has a contrary view. Most of the members of my party have voted in a different way. That is fine. They are all good people. I know that they are doing so for the very best of intentions, and are not only trying to slavishly reflect what their constituents are telling them, but also filtering that with their own knowledge about what is written here and the long-term implications of what has been proposed. With that, I thank the house for listening to me, and it will be interesting to see how this bill progresses through the other place.

**MR P.J. RUNDLE (Roe)** [7.38 pm]: I rise to briefly support the Voluntary Assisted Dying Bill, as I did in my second reading contribution. As the Premier said today, there has been nearly 70 hours of debate. It has been very comprehensive. I congratulate the Minister for Health and his staff, and make special mention of Malcolm McCusker as the chair of the Western Australian Ministerial Expert Panel on Voluntary Assisted Dying, because I think Malcolm is very methodical, very fair, and very measured. I think he and his panel certainly did a good job there, along with the Parliament's Joint Select Committee on End of Life Choices, of course. Well done to the Minister for Health and his advisers, some of whom are in the chamber at the moment. Also, well done to the staff of the Parliament for the many long hours they spent working. I tried to spend as many hours as possible in the chamber to listen to the many stories of loved ones, family and friends in their last days during the second reading contributions and also the stories of great palliative care and, in some cases, a lack of palliative care. My strong interest is in the improvement of these facilities in regional and metropolitan WA. I trust that the health minister will follow through on his promises and convictions and will continue to fund palliative care in the budgets that lie in front of him. I can assure the minister that should there happen to be a change of government in 2021 and I am still a member of Parliament, I will happily fly the flag to continue the funding of palliative care in the regions and in metropolitan areas. We will see what happens, but I will certainly be there if possible.

**Mr J.E. McGrath:** Member, you could be the Minister for Health!

**Mr P.J. RUNDLE:** Well, you never know what is around the corner.

I had to miss some of the debate to fulfil my duties as member for Roe at the Newdegate Machinery Field Day. As members know, Newdegate field day is one of our biggest events. I stayed as late as possible to listen to my leader's speech, then set off to both Katanning and Newdegate, which was a total of seven hours driving. I was slightly frustrated to be marked as absent on the initial vote, but I am sure that after my second reading contribution,

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my constituents are aware of my position in favour of the bill. I will certainly be voting in favour of it after the third reading contributions. I might also add that the minus two and three degree temperatures down in Newdegate on the night and morning of the debate enabled me to stay awake for most of the night and follow the debate anyway. I sent my traditional photo of the car with about a quarter of an inch of ice on the windscreen to “Tuck” Waldron, but as I said, I was awake most of the night anyway because it was fairly cool down there in Newdegate.

I thought everyone handed themselves very well during the debate and were very respectful. I congratulate both the members of the opposition and those of the government who had many questions during consideration in detail. I was happy to attend as many hours as possible in the chamber to reassure myself that the many safeguards in the bill were investigated and covered in as much detail as was required. I am comfortable that the interrogation of members in this chamber have covered those many elements and I am confident that, without doubt, the Legislative Council will take it to another level.

One of the only two points I would like to mention is the matter of doctors and the Hippocratic oath. I fully understand their hesitation. Many doctors whom I have spoken to have some hesitation. I made the point during my second reading contribution that many doctors are members of a small local or regional community and are part of the community. It is quite a difficult relationship when they might play tennis at the tennis club or whatever with someone. This bill will take it to another level. There will be difficulties there. The good thing is that doctors have the choice, like patients. For me that is reassuring.

I will be very interested in the telecommunications issue—telehealth. I understand there is a meeting with the federal minister or his people going on either right now, today or in the very near future. That is my understanding. I think it will be great when we hear the outcome of that because that is something that is very important in a regional context. With that in mind, I believe the most important thing for me to do is to vote on this bill on behalf of my constituents. I can assure this place that a strong majority of my constituents are in favour—anywhere from 80 per cent to 90 per cent. I have not run a process equivalent to that of the member for Dawesville, with over 6 000 people consulted. I congratulate the member for Dawesville because I thought his opening contribution set a good tone for the debate. The fact that he had done such a comprehensive job, I thought, was a great example for everyone. I have spoken to many constituents, as have my electorate officers and so forth, but I certainly have not taken it to the level of the member for Dawesville. I congratulate him on the way he set about the debate and the process.

I spoke in my second reading contribution of my aunty who recently passed away from motor neurone disease. I know that her close and extended family would be pleased with the comprehensive debate that has happened. That was the opportunity they wanted to see. She was also very pleased to be able to talk to members of the Legislative Council. It comforted her in her last days. I am very comfortable that this has been a robust process and I can inform my constituents and my electorate of that. I respect the views of those who are against. However, my overriding sentiment and that of my electorate is in favour of this bill. For me, it is about choice. For my constituents, it is about choice. It is choice about the manner in which death will occur and dying in a controlled and timely manner in the right place and surrounded by family. For me, that is the overriding sentiment. I think this will be the most important legislation many of us will ever vote on. I commend the bill.

**MS M.M. QUIRK (Girrawheen)** [7.46 pm]: Over the lengthy and at times torturous debate in past weeks, I anticipated that we would have a complete and transparent picture of how these laws would operate. Alas, that is not the case. Many questions remain. Before I address these, I commend the many advisers who were put under extraordinary time pressure to assist in drafting, advising and briefing members. Amongst the questions remaining unanswered is the reason for undue haste. No satisfactory response has been given. This undue haste has led to late sitting hours, which are not amenable to clear and lucid deliberation. More significantly, the undue haste has meant that mistakes have been made. As was pointed out, the explanatory memorandum and the bill do not readily coincide. Most importantly, the explanatory memorandum asserts that in various dealings doctors will act independently of one another. Nowhere is that contained in the bill itself. There are even spelling errors in the explanatory memorandum. Such an observation may seem nit-picking and petty, but if minor details escape attention, I do not know that we can accept confident assurances that compliance on major and serious matters will be conscientiously adhered to. Similarly, that very independence has been cited as one of the so-called 102 safeguards.

Another question to which I regrettably did not receive an answer was why none of the amendments moved were accepted. Most dealt with giving greater clarity to the proposed laws. One of the most significant of these, and a number of members have mentioned this, was moved by the member for Armadale and dealt with the prohibition on a doctor initiating the subject of voluntary assisted dying. He raised this for the very real and cogent reason that many people who are suggestible for one reason or another may agree to that course of action without fully appreciating the import. Also perplexing is that if the measures proposed in the bill are so non-contentious and

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straightforward, why was it felt necessary to use opaque terms throughout the bill? Why is this not just euthanasia? Why is it not suicide, albeit with physician oversight? Why is it okay to produce a misleading and incomplete death certificate?

Another query that was not satisfactorily explained concerns the numerous examples of the wording of clauses throughout the bill varying slightly from the equivalent clause in the Victorian legislation but in a material particular. Usually these variations have had the effect of diluting the level of accountability and protection. Likewise, the constitutional conflict with the commonwealth Crimes Act concerning inciting suicide through communication services is not yet resolved. We were advised that the Attorney General secured advice from the State Solicitor and Solicitor-General. Neither advice has been tabled and the exact nature of that advice has not been disclosed, but the Attorney General for the state assures us that there is no difficulty. His letter to Attorney-General Porter on the matter in late August is yet to receive a response.

The format for training medical practitioners and nurse practitioners is in its early stages of development. However, it was confidently asserted that even with the minimal training planned, practitioners could readily identify coercion or lack of capacity. We all know that identification of these is problematic, even to the most experienced practitioners. In some cases, it requires a series of encounters over days, weeks or even months to assess properly. This is simply not possible under the time frames in the bill.

The creation of the criminal offences attracting substantial penalties on its face looks like an effective deterrent to wrongdoing. However, these clauses are also inferior to the Victorian equivalents and I question whether there is an overlap with existing provisions of the Criminal Code. What kind of evidence would be available to make out a prosecution beyond reasonable doubt? This is especially so given the lack of real-time monitoring by the board, minimal or no intervention of the coroner, a misleading death certificate and the setting in which this offence may have taken place. Also, the many things ordinarily dealt with by way of regulation are to be addressed by guidelines issued by the chief executive officer of the Department of Health or his delegate. Is it to be assumed that this is to keep the process streamlined and less onerous?

Finally, on the issue of questions not satisfactorily addressed is the definition of “palliative care”. We are told that this bill does not address palliative care and, accordingly, the focus on it in the consideration of the bill is misplaced. However, under clause 26 of the bill, a practitioner is obliged to discuss palliative care and treatment options. As has generally been conceded, “palliative care” means different things to different people. A definition in the bill may have assisted in a greater understanding and added greater precision to any discussion with patients. It is also understood from the consideration in detail stage that the shortage and lack of palliative care in the regions will be addressed by funding. I certainly welcome the commitment given to additional palliative care in this year’s budget. As I said in my contribution to the second reading debate, calculations suggest that the appropriate ratio for palliative care specialists in Western Australia should be 2:100 000. Western Australia has 0.57:100 000. We have a lot of catching up to do. The estimate is that over four years, \$600 million is needed and medical specialists in the field need to increase from 15 to 50.

In the context of my constituents, the minority report of the Joint Select Committee on End of Life Choices found in its finding 10 on page 67 —

Apart from a small number of private beds at Glenngary Hospital, there is no inpatient specialist palliative care hospice in the northern suburbs of Perth.

The committee recommended —

The Minister for Health should facilitate the establishment of an inpatient specialist palliative care hospice providing publicly funded beds in the northern suburbs of Perth.

I want to stress that there is already an area within Joondalup Health Campus that was specifically built as a hospice, but it is not being used for that purpose. With the expansion of Joondalup Health Campus, I hope in the near future, maybe that space can be freed up so that the northern suburbs are better serviced with palliative care.

The underlying premise in these laws that I find impossible to reconcile is that there are occasions when it is morally justifiable to intervene directly, but mercifully, to hasten death when death is inevitable. It is morally unjustifiable because intentionally killing a person is a crime. Our society has always forbidden taking an innocent life and for that reason such an action carries with it the most serious of consequences. This prohibition is so fundamental that legislating to allow euthanasia and physician-assisted suicide does not eliminate the very sound social policy bases that the risk exists that voluntary suicide could turn too easily into involuntary suicide. Effective procedural safeguards are an exercise in wishful thinking or, as Paul Keating said, “bald utopianism”. Establishing robust protections has been problematic in all other jurisdictions.

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The actions permitted of doctors under the bill, however willing they are to participate, is totally incompatible with the notions of healing and doing no harm. The laws are bound to have a profoundly corrupting effect on the practice of medicine. Although this bill covers any eligible person over 18, it is likely that a preponderance of those seeking access to an early death will be elderly. This demographic inevitability creates a situation with which I am extremely uncomfortable. Knowing that these laws exist, I consider the socially isolated elderly and those with limited capacity and those coerced or unsupported by friends or relatives to be more likely to meet the subjective test set out in the eligibility criteria under clause 15. They are more likely to feel that they are a burden.

This scenario is by no means a new one. Seventeenth century playwright Thomas Middleton wrote a play called *The Old Law*. In it, the good characters are those who follow conscience and the natural law, defying the unjust and unnatural law laid down by the state. The duke of a fictional empire passed a law condemning all men at 80 years of age and all women at 60 years of age to be executed as they were regarded as being of no use to the state. Selfish young courtiers and wives of elderly husbands praised the law, which allowed them to inherit wealth and broaden the scope for irresponsible living. The law encouraged falsification of parish records so that a character could get rid of his elderly wife. Another, with the help of his wife, attempted to save his father by staging a mock funeral and then hiding him. Eventually discovered, the pair were brought to trial before the young irresponsible heirs who have positions of judicial authority now that their elders have been executed. At the last moment, the duke reveals that the elders have not been killed and the new law has been a means of discovering the true nature of the young courtiers. The play ends with the young heirs dismissed from their positions of authority and the husband and wife raised in their places. We can see that the issue we confront is by no means a new one.

To the extent that this bill fosters the awful notion that the elderly are a burden, it is inimical to a community that values those people and can enable them to have a quality of life in their last years, months and days. Nowhere is the phrase attributed to Vice President Hubert Humphrey more apt. He said —

The moral test of government is how that government treats those who are in the dawn of life, the children; those who are in the twilight of life, the elderly; and those who are in shadows of life, the sick, the needy, and the handicapped.

The proponents of this bill declare that they are motivated by love and compassion, and I do not doubt this, but good intentions alone will not cut it. Good intentions will not prevent the sick and elderly from feeling as if they are a burden. Good intentions will not adequately source the palliative care system, either non-existent or stretched to the limit. Good intentions will not ensure that coercion of those susceptible to persuasion are not agreeing to something that they in reality would rather not do. Good intentions will not enshrine a level of independence between doctors, which is not in the legislation itself. Good intentions will not prevent persons from travelling elsewhere to avail themselves of this process, possibly placing added burdens on the Western Australian health system. Good intentions will not prevent one-stop shop practices being set up and the advertising of those centres. Good intentions will not fix the lack of real-time oversight by the Voluntary Assisted Dying Board of the process and nor will good intentions effectively guard against the possibility of wrongful death.

**MR J.E. McGRATH (South Perth)** [8.00 pm]: I rise to contribute to the third reading debate on the Voluntary Assisted Dying Bill 2019. Legislating for voluntary assisted dying has been very difficult; it has been controversial and confronting. But the breadth and depth of consultation and rigour of the processes to develop this bill gives me confidence that this is good legislation. As it heads off to the upper house, which will happen sometime tonight, I do not think that this legislation requires another inquiry, and I will explain that a little later. By my calculations—it has also been mentioned by the Premier and the member for Dawesville—this chamber has devoted 67 hours to the second reading debate and the consideration in detail stages of the bill. In Victoria, where similar legislation was passed, its Legislative Assembly, which has 84 members, took 38 hours for the second reading, consideration in detail and third reading stages. In all my years in this place I have never experienced such close scrutiny of a bill, which I think is good. Even some of our friends in the upper house joked to me the other day: “It’s about time you guys in the Legislative Assembly did what we do all the time.” They are very critical of how we often send stuff to them that they have to fix up. But I think that the scrutiny of this bill has been outstanding. I have never experienced so many “what if” questions or so many questions about the meaning of words, the details of implementation or the content of regulations and forms that have not yet been drafted, and that is fair enough. That is good scrutiny. The point has been made by other members that this is probably the most important legislation that will ever go through this place, at least during our time. The government ministers painstakingly responded to each of those questions, in particular the Deputy Premier who showed commendable endurance. I felt that the Deputy Premier acted in good faith throughout the whole debate and his resilience was pretty good, even

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though he was criticised for having a break. I recall how once Premier Barnett sat at the table when Troy Buswell was the Treasurer and needed a break, so it is not unusual to have people stand in for ministers.

To a significant degree, the bill is not new. It is largely modelled on the Victorian Voluntary Assisted Dying Act 2017, which in key respects was itself drawn from the Oregon Death with Dignity Act and the practical knowledge gained by more than 20 years' experience in that state of the United States. It is also important to recall that the bill was informed by the advice of the Western Australian Ministerial Advisory Panel on Voluntary Assisted Dying. This panel was chaired by eminent jurist Malcolm McCusker, AC, QC, and supplemented by another 12 members with a breadth of expertise and experience, six of whom were medical practitioners, including four whose field of speciality included palliative medicine, and two of whom had previously been presidents of the Australian Medical Association WA. It is important to mention the experience on that panel. The panel called for submissions, released a discussion paper, held public forums throughout the state and held stakeholder meetings at round tables with topic experts and groups that might be impacted by the legislation, including health professionals and peak bodies representing specific populations. The panel's work built on the work of the Joint Select Committee on End of Life Choices, of which I was a member. That committee had a life span of roughly 12 months. During that time, more than 700 submissions were received and 81 hearings were convened with more than 130 witnesses. I understand that it is the largest parliamentary inquiry in the state up until now, which is another reason why I do not want this legislation go through another inquiry process.

The lengthy and painstaking process has now been underway for in excess of two years. Members should be aware that this process reflects the process adopted, as I said, by Victoria in creating the Voluntary Assisted Dying Act, which was assessed as one of Australia's best examples of evidence-based policymaking. Both the Institute of Public Affairs and Per Capita in Australia considered that the equivalent of a green and white paper process had been adopted in Victoria for public feedback and final consultation purposes and to explain complex issues and processes. Both also considered that the Victorian process demonstrated a need for voluntary assisted dying based on hard evidence and consultation with all the stakeholders involved, particularly interest groups that would be affected. Once again, the government, in putting this legislation together, followed the same process that happened in Victoria.

I will talk about some of the issues raised in consideration in detail. The first is the language of the bill. Its title contains just three words: voluntary assisted dying—all plain English and easily understood. How is the title, which includes the word “dying”, too coy about its subject matter? Voluntary assisted dying is not at all like suicide, as I said in my contribution to the second reading debate. Access to voluntary assisted dying is not only very restricted, but also a highly regulated process. Medical professionals must be consulted and eligibility is determined by them, not by the patient. They must report in next to real-time and this will be monitored by a government agency—another process. This is a very long way from the often impulsive, brutal and lonely suicides of desperate people, particularly those whose decision to die might not have been acted on had they first consulted professional health services or had their capacity assessed. Some critics say that they value life, yet they insist on referring to voluntary assisted dying as assisted suicide. The chair of The Royal Australian and New Zealand College of Psychiatrists WA believes that this will undermine suicide prevention efforts. I agree that the term “euthanasia” is often used in the community and might have been a substitute title for the legislation had the bill allowed for only practitioner administration, but it does not, so to use the term “euthanasia” would not have been accurate.

I will now get on to safeguards. Existing end-of-life choices such as palliative starvation and terminal sedation also lead to death, perhaps enabled by others if the patient has lost capacity, and yet neither of these two choices—palliative starvation and terminal sedation—have the legislated safeguards proposed for voluntary assisted dying. There are no safeguards if a patient decides not to take food or liquid. I ask: why is there no concern now, in the examples that I have just given, about subtle coercion by family members with so-called inheritance impatience when they, and not the patient, can make the decision to end the patient's life? It is because those working in the field—we heard evidence from Canada about this—say that families are much more likely to resist, rather than encourage, the decision of their loved ones to end their life. They say, “We want you around. We do not want to lose you.” The evidence in other jurisdictions is that people are not saying, “Go on. It's time to go.” I think a lot has been made about this, but I have greater faith in human nature than that.

I think there are a multitude of safeguards in the bill. For instance, clause 15(2) is very critical because it excludes access to voluntary assisted dying on the basis of just a disability or mental illness. If a person has a disability or a mental illness, that is not enough justification to even apply for voluntary assisted dying; they must have a terminal disease that will end their life.

Practitioners involved in voluntary assisted dying are required to have lengthy experience and additional training to specifically identify and assess risk factors for abuse or coercion. I think in part of this debate we lost sight of

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the fact that practitioners are very good at what they do. They deal with people all the time. When you come out from seeing your GP, there are half a dozen people waiting in the surgery to see him. GPs know how people feel and how they will act, especially their patients. Even if a person goes to see a practitioner who is not their regular GP, GPs will be trained; that is another safeguard.

Patients need to have capacity. They need to demonstrate that they understand the voluntary assisted dying decision and its effect, and must be able to weigh up the various factors. As I said, professionals will be able to gauge whether people have that capacity and whether they really understand what they are getting themselves into. I believe that practitioners will sit down with people and ask them whether they really want to do this. I do not think they will say, “Go on; I’ll sign the form and we’ll get you in there.” I do not think that will happen. A minimum of four people will need to certify the voluntariness of a patient’s request for assisted dying and there will be a lot of hoops to jump through. If certification is found to be false or misleading, practitioners will be liable for criminal prosecution. Practitioners will risk their professional accreditation as well. Other criminal offences include administering lethal medication without authorisation or inducing a person by way of undue influence or coercion.

I now come to the scourge of elder abuse in our community. A lot of members raised this matter and how it would impact on the legislation. I draw members’ attention to the report of the Select Committee into Elder Abuse from the other place. That committee spent a year inquiring into elder abuse for the Legislative Council before tabling its report titled “‘I Never Thought it Would Happen to Me’: When Trust is Broken”, which was tabled on 13 September 2018. In that report, the committee rejected mandatory reporting by professionals of abuse even when they suspect an older person is being abused. The committee resolved that even if a professional thinks an older person is being abused, the committee did not recommend that they must mandatorily report that. Why did the committee decide that? It concluded that because —

... the dignity of older people must be respected as must their right to decide what action to take, if any, ...

The committee concluded that if an older person is being abused or another person thought that they are being abused, it is the older person’s right to decide whether they want to take action against the abuse. I think the same should happen with this legislation.

Another issue that came up was whether voluntary assisted dying should be put on someone’s death certificate as happens with suicide. During consideration in detail, I said that voluntary assisted dying is certainly not suicide. These people are dying and are being treated for a condition that will end their life within either six or 12 months. They are like those who now deliberately hasten their death through palliative starvation and the potential effect of terminal sedation or double effect. No reference is made to any of those practices on a death certificate, which instead records an underlying medical condition. If a person with cancer undertakes palliative starvation or does not take fluids, the cause of death is cancer. I do not think it should be any different with voluntary assisted dying. Another issue with placing voluntary assisted dying as the cause of death and not the actual disease on the death certificate is that it could cause a problem with life insurance claims. Nick Bruining pointed out in his column in *The West Australian* the importance of recording an underlying medical issue as the cause of death because it would mean that if a person’s superannuation fund has life insurance and a policy that operated outside of superannuation, there would be no issue with the cause of death. This legislation is intended to give terminally ill people the dignity to make their own choices when they are dying. We should not make their families suffer even more after they have passed away by putting voluntary assisted dying on their death certificates.

I now come to palliative care, something that was raised throughout the debate. Opponents of voluntary assisted dying say that the right to palliative care needs to be included in this legislation and that there should be huge increases in government funding for palliative care. I do not believe that palliative care is the silver bullet and that if people have access to palliative care they will not need voluntary assisted dying. Professor Ian Hammond, AM, recently said that in his entire career as a gynaecologist and oncologist at least 20 patients had asked whether there was anything he could do to end their suffering. Professor Hammond has become an advocate of voluntary assisted dying, and he says that he would like the choice were he to have a disease that made life unbearable.

Much concern has been expressed about the low numbers of full-time palliative care specialist practitioners and the rate of palliative care hospital admissions in Western Australia. I would like to point out that just last year WA’s community palliative care model was assessed as the gold standard in Australia for palliative care following a Productivity Commission inquiry—that is, the gold standard in a country ranked second in the world for its palliative care. In WA, specialist palliative doctors provide consultancy services for patients in the community rather than work full time caring for hospital inpatients. This means that fewer full-time palliative care doctors and palliative hospital admissions are required. According to the Productivity Commission, WA palliative care is the

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gold standard because far more people in WA are able to die at home. I think we all agree that that is the wish of most people. Do we want more of our health funding used for additional full-time palliative specialists and palliative hospital admissions and fewer people having the choice of being supported to die at home? The fact is no matter how much we spend on palliative care or how many full-time specialists we have, it will not resolve all suffering at the end of life.

In conclusion, after being involved in this matter now for more than two years, I have no doubt that voluntary assisted dying is required in this state. However, I expect that some opponents of the bill will not vote for it regardless of whatever amendments are offered to accommodate their concerns. This is a free vote and it is their right to oppose the bill. I will always respect members' right to do that and I expect the community will respect that, too. If a member genuinely does not believe in an end-of-life choice—it might be a religious belief or just a normal faith belief—I think the community will understand that, but the community needs to know where we all stand on the position. I respect the views of our leader. I took down what the member for Scarborough said in her speech earlier because her comments were very interesting. The member for Scarborough thinks that the amendment to prevent doctors from raising voluntary assisted dying as an option with patients should be passed when the bill goes to the upper house. The Leader of the Opposition said that she would consider supporting this legislation if that happens. I personally do not have a great problem with that amendment. There are two schools of thought. People have said to me, "Well, doctors give you a lot of advice when you are very sick at the end of life. They can recommend that if you really do not want to, you don't have to take food or fluids. They can make all sorts of suggestions." I personally do not mind the member for Armadale's amendment. Someone said to me, "Maybe some patients won't know about voluntary assisted dying." I would be very surprised if patients were not aware of VAD by the time this legislation, if it passes the upper house, comes into force. If this legislation passes, it would be fairly well known that VAD is an option. I support what the Leader of the Opposition is doing on that amendment. I do not think it would impact on the bill greatly; it is the same as the provision in the Victorian legislation. If people are really crook, I think their friends or someone else will say, "You know there is another way if you really need to do that."

Our leader also said that she would like to see a definition of palliative care in the legislation. I am not so sure about that because palliative care could be an ever-changing thing and how do we define it. This legislation, if it passes, will be in force for a long time. I am not sure about that amendment, but we will see what happens in the upper house.

**Mrs L.M. Harvey:** That's not a deal-breaker. I just think it's silly not to have a definition in there.

**Mr J.E. McGRATH:** Yes. I would support the Leader of the Opposition on that.

In closing, I have confidence in the rigorous process we have undertaken. I think the government has spent a lot of time and effort putting together this legislation. I have watched from afar since our committee finished its work. I think it is good legislation. Obviously, it will be scrutinised very seriously and in great depth in the upper house. We will see what happens up there, but I think that this is good legislation and the public wants it. I meet a lot of people and, wherever I go, I say to people, "We've got a difficult decision to make. What do you think of this?" They just say to me, "John, do it. It's a no-brainer." I have always supported the bill, I still support it and I look forward to it going to the Legislative Council after tonight.

*Distinguished Visitor — Sandra Nelson, MLA*

**The ACTING SPEAKER (Ms J.M. Freeman):** Before we move on, I welcome Sandra Nelson, MLA, member for Katherine, from the Northern Territory Legislative Assembly. Welcome to the chamber.

*Debate Resumed*

**MR D.C. NALDER (Bateman) [8.22 pm]:** I stand to contribute to the third reading debate on the Voluntary Assisted Dying Bill 2019. At the outset, I pointed out that my position was that I was not principally opposed to the legislation; in fact, I understood and supported the intent of this legislation. That said, I did have some concerns and I wanted to abstain from making a final decision until we had been through the consideration in detail process. Unfortunately, that consideration in detail process did not leave me with confidence in the legislation and I am unable to support it at this time. Again, it is not because I am principally opposed to the intent of this legislation; it is more my fundamental concern about what sits around this legislation.

We talked about palliative care. I like to think of it as more than palliative care; I like to think of it as the whole end-of-life care. We talked about the standard of living in Australia. I believe that we have one of the best standards of living in the world, and we should aspire to ensure that every Australian has access to the best end-of-life care in the world. The member for South Perth pointed out that our palliative care is gold standard. That is fantastic and

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that is what we should expect, given the standard of living in Australia, but fundamentally it concerns me that not everybody has access to that gold-standard palliative care and that as many as two in three patients, or people facing terminal conditions, may not have access to palliative care. I feel that we are jumping from an unsatisfactory situation in which we have not resolved the issue of palliative care to voluntary assisted dying or euthanasia. I believe that, as a minimum, palliative care should be done in conjunction with, if not before, we finalise voluntary assisted dying. That is my position, and I feel that we have not tackled that.

I also had concerns about some of the approaches by the Premier and the minister to the amendments raised in this house. I believe that some of those amendments deserved our proper consideration. I was left with the impression that it was a predetermined decision that 100 per cent of the amendments raised in this place would be rejected. I found that unfortunate. I believe that some very good amendments were raised, particularly by the member for Armadale, the member for Girrawheen and others, that warranted proper consideration. I do not feel that proper consideration was given to those amendments, irrespective of the hours that were put into the debate. I do not care how long the debate was; to see these amendments disregarded, which seemed like a predetermined position, left me feeling very concerned. I hope that those amendments will be addressed properly in the other house, but I believe they should have been addressed here.

My point around addressing palliative care is that I do not think it is acceptable that as many as two-thirds of people do not have access to quality palliative care. I accept that it is impossible to deal with palliative care in every remote location, but we need to ensure that there is proper palliative care for people facing terminal conditions in the regional centres near some of those remote locations. In the absence of being able to deal with that, for me, it is akin to making this an economic decision in which we are saying that we cannot afford to provide proper palliative care for everybody and, therefore, it is more convenient if you die. I have a concern that in this bill we have made it an economic decision to not address this issue. I think the member for Girrawheen pointed out quite correctly that a lot of the so-called additional funding for palliative care has not been additional funding, but funding rebadged from other programs. To me, there should have been as big an inquiry about total end-of-life care as there was for voluntary assisted dying. I believe that to do it in isolation of the complete picture is a mistake and for that reason, unfortunately, I cannot support voluntary assisted dying at this point. I repeat that I am not against the principle or the intent of what this legislation is trying to achieve; it is that in the absence of a whole proposition for end-of-life care, I feel that we have created some stark gaps in our end-of-life care options for people. On that basis, I cannot support this legislation at this time.

**MS A. SANDERSON (Morley — Parliamentary Secretary)** [8.28 pm]: I want to make a brief contribution to the third reading debate on the Voluntary Assisted Dying Bill 2019. I thank those members in the chamber who have contributed thoughtfully and meaningfully to the debate. It has been an extensive debate, as is right and should happen with this kind of legislation, with nearly 70 hours of consideration up to earlier today—longer with this evening's speeches. I want to thank the member for Girrawheen for her contributions, which are motivated by a genuine desire to see improvements in palliative care and supporting people at end of life. Although we may not agree on what that looks like, broad opinions in this place are an important part of the process. I thank her for her diligence and thoroughness in this matter.

By and large, the debate has been respectful and courteous, and I sincerely thank those who have shared their own stories and those of their constituents. I have been struck by the tenor of the debate from some members that emerged during the consideration in detail stage—that is, a deep distrust in our medical community and health sector and that many doctors are not to be trusted. I find this quite extraordinary, particularly from members opposite, who probably represent more doctors than do any of us in this place. Claims that there are broad community concerns about so-called doctors' loops never once emerged in the two years of consultation that preceded this bill—not in the joint select committee process or in the biggest consultation ever undertaken by the health department and the Ministerial Expert Panel on Voluntary Assisted Dying. I find the fixation on the independence of doctors an interesting reflection of those members' views of the profession. It is common practice for doctors to review each other's opinions. It will be no different in the case of voluntary assisted dying. In fact, I would expect more caution, not less, from doctors.

Although we heard some very sensible inquiry into the bill, we also heard, quite frankly, the most outlandish and hypothetical scenarios. Our job as legislators is not to legislate for crazy hypotheticals, but to look at the evidence with a level head and to ask ourselves whether what is happening now is safe and acceptable. The answer to both those questions is no; it is not safe and it is not acceptable. I remind members that there are no safeguards now, as pointed out very articulately by the member for South Perth. There are no safeguards when a physician can decide to sedate someone into a coma. No consent from the family is required; it is entirely up to the physician to do that. There are no safeguards when discussing with a patient the options to withdraw hydration and nutrition to essentially



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slowly starve themselves to death. There does not seem to be overwhelming concern about any subtle or overt coercion or about the lack of current safeguards. That is where I come from as a legislator: is it safe now and is the current situation acceptable? The answer to both those questions is very clearly no. Based on the evidence, no, it is not.

This bill will make the end of life safer for patients and for practitioners. As the Leader of the Opposition pointed out during the debate, people regularly have schedule 4 and schedule 8 drugs in their house. We heard about fentanyl lollipops and oxycodone. Not everybody has a safe to keep them in, and there is no requirement to keep them in a safe. Morphine, oxycodone and fentanyl—heavy sedatives that will kill people—can be found in the home of any palliative care patient who is receiving home care, and there is no requirement to necessarily return them. It was entirely up to the Leader of the Opposition to do that once her husband had passed away. There are no safeguards. With this system, there will be clear and current monitoring of those very dangerous substances, whereas currently there is not.

Terms such as “euthanasia enthusiast” do nothing to contribute meaningfully to the debate. Similarly, I find deeply objectionable the assertion that autopsies should be performed on people who access voluntary assisted dying. We are talking about terminally ill people who have probably had multiple surgeries and years of invasive treatment and are a shadow of their former self and about subjecting their families to an autopsy. The depiction of the bill as capital punishment is also quite beyond my comprehension. We heard over and over the concerns about coercion. The data from jurisdictions that have voluntary assisted dying does not justify these heightened concerns. In fact, it demonstrates that we can legislate for a scheme that provides this option and protects people from abuse. The profile of the majority of people who access VAD is clear: they are white, they are educated, they have access to palliative care, they are over 65 years of age and they are terminally ill.

I completely reject the assertion that this bill is not safe or needs tightening. This will be the most restrictive regime in the world. This has been the well-worn strategy of “not this bill”. Because community sentiment is so supportive, it is not palatable for members to say that they do not support it. I give credit to those members who are honest about their decision not to support it. Instead, there has been an attempt to make it so restrictive as to be unworkable and to unpick the two years of consultation and legal and clinical guidance that has shaped this bill. I completely reject the idea of the government dictating what a doctor can and cannot talk about with the legal options that are available at the end of life. This was also roundly rejected by the public and the health sector during the consultation process. To quote one doctor, if there is a sacred cow in medical ethics, it is the sanctity of the doctor–patient relationship. Other than Victoria, no jurisdiction in the world has this unusual interference, and I do not believe it has any place in Western Australia.

I and my fellow committee members heard hundreds of harrowing, horrific stories of people experiencing bad deaths in palliative care. The evidence was laid bare by the palliative care sector itself that between two and five per cent of people will suffer significantly at the end of life. To put that into context, in Western Australia, that is 300 to 700 people each year. I think they are worth legislating for. This is not to say that many people will access voluntary assisted dying. Should the Parliament pass this bill, we know that will not be the case. But these people will have a choice, and that choice itself will be therapeutic and an enormous comfort.

Many people have been instrumental in the development of this bill and I have genuinely enjoyed working with members across the aisle on this issue. It is a rare opportunity in our divided political system to work with other members, and the significance of that has not been lost on me. I hope this bipartisan approach can continue in the other place. The Minister for Health wins the award for most patient and courteous in his handling of this bill, at times under very trying circumstances, and, of course, there were his outstanding advisers. One of the great benefits of being in government is working with incredibly talented people in the public sector, and on this issue there was no shortage. Like the member for Dawesville, I, too, say that it has been a real honour to work with former Governor Malcolm McCusker, QC. Again, I thank the Premier for his leadership on this issue. It has been considered, principled and unwavering. People tell me it has given them hope to believe that politics is not an entirely self-serving pursuit.

This has been an exhaustive process involving the community, health professionals and the legal community. It is a sensible and compassionate response to the way we are dying now. The way we are dying is changing. We are taking longer to die, with terrible suffering. For neurodegenerative diseases such as Huntington’s disease, supranuclear palsy and motor neurone disease, from which people can choke, cough and suffocate to death, there is a better and more humane option. This bill provides that option. This is our opportunity to provide a humane choice.

**MRS A.K. HAYDEN (Darling Range)** [8.37 pm]: After listening to two weeks of speeches during debate on this legislation, my third reading contribution will be a summary of what I have observed and heard during the debate.

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Along with many members, I have said during the debate that this bill is one of the most important and challenging pieces of legislation that we may ever debate. At the outset, a respectful debate was to occur, in which every member was allowed the right to voice their opinion and ask as many questions as required in order to comprehend the bill's significance and purpose. I sat through the majority of the speeches and listened politely, even when I did not agree with the comments being made, as I believed, and still do, that this debate required and deserved this courtesy. Sadly, I cannot say that all members or ministers showed the same courtesy. To say that I was disappointed in the behaviour of this government during debate on a bill of this importance is an understatement.

Many members raised their concerns during the second reading debate and the minister indicated that he would answer them during the consideration in detail stage. However, many of my concerns were either glossed over or left unanswered. I do not believe the concern about palliative care raised by numerous members during the debate has been addressed. As highlighted throughout the debate, palliative care is poorly understood and is unavailable to many within the community. The limited supply of service is the key issue. It is due to either the community's remoteness or the lack of resources required to accommodate the numbers in need. Sixty per cent of Western Australians who could benefit from palliative care are either unaware of the service or unable to access the service. As I have mentioned previously, sadly, WA has the lowest number of publicly funded beds per capita in the nation, with only 15 full-time palliative care specialists. As the minister outlined in his second reading speech, and I quote from *Hansard* of Tuesday, 7 August 2019 —

Work is underway to improve the quality of advance health directives, and to strengthen and resource palliative care services.

He went on to say that members will not be considering voluntary assisted dying instead of palliative care—he is referring to this bill, of course. It continues —

We are considering the compassion we should show those people for whom palliative care does not relieve their suffering. ... I might also advise members that detailed planning is underway to implement the Department of Health 10-year “WA End-of-Life and Palliative Care Strategy 2018–2028” ...

It continues —

In those jurisdictions with voluntary assisted dying, they are accessing palliative care at increasing rates. Palliative Care Australia has reported that if anything, in jurisdictions where assisted dying is available, the palliative care sector has further advanced.

Minister, I am still struggling to understand how we can be willing to legislate for euthanasia before attempting to improve awareness of and access to palliative care services for all Western Australians first. It deeply concerns me that the minister's comments in the second reading speech outlined that in jurisdictions where assisted dying is available, there was an increase in people accessing palliative care services. Why do people need to seek out euthanasia before being able to access palliative care? To me, this debate has only further highlighted the need for this government to invest in and improve palliative care across our state.

I also do not believe that the concerns I raised around elder abuse received an adequate response. With the government admitting the need to develop policy to combat this tragic yet emerging issue, we are again seeing the implementation of assisted dying before we are seeing any policy around protecting one of the most vulnerable groups that could be coerced into ending their life early for the benefit of others. With 75 000 older people already at risk of elder abuse in Western Australia, I again, on my conscience, cannot support this bill. There is no safeguard to protect those suffering from elder abuse. This legislation, in my opinion, is putting the cart before the horse. I choose to represent those in my community, to protect them to the best of my ability and to ensure that the legislation passed will not have unintended consequences that may have a detrimental effect on their lives or the lives of their loved ones. Surely our focus should be to provide all opportunities to improve quality of life, health and support before granting an option to end life. What I have learnt as a legislator is that there is a difference between a personal view and an opinion and the implementation of a law that will have an irreversible impact on all our communities. This is what we have in front of us today. It is not an opinion and it is not a view; it is actually a decision to create law.

As members, we go out to the public and speak of leadership, encourage people to put up their hand, to not be afraid to voice their opinion and to ask as many questions as possible, and say that no question is a dumb one, yet the government's behaviour during this debate has not endorsed any of this. The role of this Parliament, in my opinion, is to debate, consider and improve legislation. The government's role is to articulate its intention so that when the time comes to act on the passed legislation, those responsible for the structure, training and delivery of this bill will have no doubt about the intention of the government and Parliament. I do not believe that the government has achieved that over the past two weeks. The only intention that was made very clear by this

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government was that regardless of the contribution and regardless of the merit, no amendments would be considered, let alone accepted. We have a government that either believes it is far superior to any other mind within this chamber or simply shows no regard for the role of this Parliament.

Sadly, the Premier continued this behaviour right through to the third reading this afternoon, with his inappropriate and unnecessary comments, implying that anyone who opposes this bill is not thinking independently and alluding to them being bullied. I can assure the Premier and everyone else in this chamber that no-one is bullying me and none of my colleagues has been bullied. The insinuation that I cannot think for myself and that others are telling me what to say and how to vote is totally unacceptable for a Premier in 2019 and I find it absolutely appalling. Sitting until 5.30 am was completely unnecessary. It was a burden on the staff within Parliament, the staff of the minister and every member of Parliament. It was not needed or required, especially when the government's plan was to pass the legislation this week and to have it ready for the upper house to debate it in October. We are on track with that, yet there seemed to be some need for political pointscore by sitting until 5.30 am, which benefited nobody.

The Premier started this debate by saying that all members would be granted a conscience vote and that all members and their positions would be respected, yet the Premier has not been able to control himself and has shown his true character with comments like the one I just explained and his overall attitude to any questions asked during consideration in detail. I wish to congratulate all the members who spoke in his place, no matter what their position. They showed courage and strength. It is a lot easier to be sheep and follow. It takes conviction and belief in yourself to stand up about what matters to you and what is important. I respect the positions of all members. What I do not respect is bad behaviour.

In closing, for the reasons I outlined during my contributions during the second reading and consideration in detail stages and in this speech, topped off by the government's lack of flexibility and willingness to improve the legislation, or even contemplate any other opinion or assistance, I oppose the Voluntary Assisted Dying Bill 2019. I will close on a quote attributed to Tolstoy that I believe sums up this debate: wrong does not cease to be wrong because the majority share in it.

**MR S.K. L'ESTRANGE (Churchlands)** [8.45 pm]: In my speech at the second reading stage, I reflected on the consultation that had taken place. I listened to constituents and read their letters and emails. I attended information briefings. I met with medical practitioners and sat down with palliative care experts to hear their views. Like many others in this chamber, I reflected on my own lived experiences in dealing with life, death and suffering by family members in particular. As I said in my speech at the second reading stage, I remain empathetic to what motivates fellow Western Australians to want the option of voluntary euthanasia. As I said in my speech at the second reading stage, it is the horrific cases and the small percentage of people who will face incredible pain, suffering and humiliation for themselves and their families in the final stages of life when dying from a degenerative terminal illness that motivate the yes vote for voluntary euthanasia. I, too, am empathetic to the need to help people who face this traumatic end to their lives.

I also referred to a Roy Morgan poll on assisted dying/euthanasia that was taken in November 2017, which found that 87 per cent of Australians are in favour of letting patients die when they are hopelessly ill and experiencing unrelievable suffering with no chance of recovery. I believe that the vast majority of people who have communicated their support for voluntary euthanasia to me were seeking legislation that focused on offering voluntary euthanasia for those who were hopelessly ill and experiencing unrelievable suffering with no chance of recovery. Had this legislation been focused on this aspect of eligibility, it would have enabled carers to distinguish between what is called terminal sedation and voluntary euthanasia. This refined focus would have better supported the wishes of community members who are calling for choice. Unfortunately, the approach taken by the government was to predetermine the outcome of the debate on every clause in the bill. Any efforts to improve the bill, to make it safer with a focus on those who are hopelessly ill and who are experiencing unrelievable suffering with no chance of recovery, were ignored. This was evidenced by the fact that all amendments put forward—15 by Labor MPs and four by Liberal MPs—were voted down. None were supported by the Labor government. Some of the amendments put forward to improve the bill were moved by the member for Girrawheen—I will mention some of hers—the member for Armadale, the member for Scarborough and the member for Darling Range. The member for Girrawheen put forward an amendment to clause 5 to rectify the absence of the term “palliative care” and to define it in the bill. On clause 6, she put forward an amendment to provide an additional test to ensure that the person whose capacity is being assessed can reiterate what has been put to them to test retention. The member for Armadale moved a proposed clause to ensure that doctors were not permitted to initiate a conversation about voluntary assisted dying or to propose it. The member for Girrawheen proposed an amendment to clause 15 to shut a loophole in Western Australian residential status to protect against voluntary assisted dying tourism. She also

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moved an amendment under part 3, division 1, “Heading”, to require that a coordinating or consulting practitioner has relevant experience or expertise in the condition expected to cause death. The member for Scarborough proposed an amendment to clause 26 to tighten a loophole, requiring that practitioners must provide an explanation to the patient regardless of whether someone else was receiving an explanation. She also moved an amendment to ensure information consistency, so that the patient would be provided with all the information provided to the Voluntary Assisted Dying Board. Another amendment proposed by the member was to require that a patient would receive information provided to the board by the consulting practitioner, particularly if they are deemed ineligible. The member for Darling Range proposed an amendment to avoid doctor shopping by limiting assessment to no more than three times. Then the member for Girrawheen proposed an amendment to section 42 to add further constraints on who can witness documents, in line with Victorian legislation, so as to reduce the undue influence of healthcare proprietors. She proposed an amendment to clause 57 to ensure that the board safeguards come into effect before a patient has died—that is, a real-time monitor—and referred to proposed new clause 117A in cases that the board gives a notice of no objection. The member proposed a new clause at 86A giving a right of appeal to the tribunal in the case that the board is not issuing a notice of no objection under clause 117A. At clause 87, she proposed an amendment to shut a loophole of residential status in Western Australia. She proposed new clause 102A to restrict medical practitioners from advertising VAD services in line with lawyers not being allowed to advertise for personal liability claims. She also proposed new clause 117A to give the board a monitoring function in real time, not after the patient has died, by requiring a notice of no objection application from the practitioner. The final proposed amendment was to clause 149, adding a penalty for a contact person who does not comply with board requests.

Those are some examples. These were not radical; they were simply efforts to improve the bill and the safeguards. Whilst all of these amendments were voted against, there was also debate on clauses without amendments that were put to a vote. Many of the genuine issues of concern raised by both sides of the chamber were ignored. This approach disrespected those in our community who want the choice but also want a bill that will offer them the necessary protections. Some of the negated clauses included things like acknowledging and accepting the definition of suicide in the bill, protecting doctors who refuse to participate and offering better protections for those doctors, and tightening the eligibility criteria. Finally, the notion that there be no reference to voluntary assisted dying on the death certificate did not make sense to many in this place. It is akin to doctoring the actual death certificate itself. These are just some of the main examples.

The government paid little attention to a key concern I have about palliative care. What impact will the introductory of voluntary euthanasia have on the sick at a time when we are yet to build up the most effective palliative care regime? That related to clause 4, titled “Principles”, under which an amendment was moved by the member for Girrawheen, I believe, to insert a palliative care definition under clause 5. That was taken out. Whilst it existed as a key principle in the bill that the patient must be informed of palliative care services, there was no effort to define in the bill what that service actually provides.

In the report of the Joint Select Committee on End of Life Choices titled “My Life, My Choice”, the committee made several findings on palliative care, as follows —

**Finding 16**

Access to hands-on specialist palliative care is limited for metropolitan and non-metropolitan patients.

**Finding 17**

Western Australia has the lowest number of publicly funded inpatient palliative care beds per head of population.

**Finding 18**

There is a gap in care for people who are seriously unwell but not close enough to death to be admitted for inpatient hospice care.

**Finding 19**

There is limited access to palliative care medical specialists in regional Western Australia.

**Finding 20**

There is limited medical oversight, coordination or governance of medical palliative care services across WA Country Health Services.

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They were real concerns about palliative care, yet when we asked for palliative care to be defined and put in the bill so that at least those reading the legislation would understand what they should be looking at, the minister refused to do so. The fact that the government is ignoring a principle of the bill makes me wonder whether a serious approach to palliative care as a treatment has been properly considered.

Another key concern related to the risk of coercion. Several members raised this concern. I feel that coercion can be both subtle and overt. Because of this bill, and particularly if a patient is made to feel like a burden, it is an issue. The presence of undue influence can be difficult to identify and can be easily missed. That was a finding by the minority report of the parliamentary inquiry, “The safe approach to End of Life Choices: License to Care not Licence to Kill.” These concerns about coercion were explored by a number of members in this place. In particular, in clause 54, we asked how coercion could be assessed, and we were not given a clear understanding of that.

The issue of subtle and/or unintentional coercion was also explored in debate, particularly in the proposed new clause that was put forward by the member for Armadale. The member for Armadale was very concerned. He gave a very personal example of his daughter, and he worried that the legislation allowed doctors to suggest voluntary assisted dying to a patient rather than ensuring that only the patient may raise the idea. The member for Armadale’s amendment was that a registered health practitioner was not to initiate a discussion about voluntary assisted dying. I use the amendment proposed by the member for Armadale as an example of what could be unintentional coercion. Although the doctor might be presenting all options to the patient in good faith, if the patient has a certain style of thinking, they might not have been considering voluntary euthanasia as an option, but they might think: the doctor has presented it to me, I now need to think about this as a serious option; otherwise, why would the doctor have mentioned it to me? I do not think we provided enough safeguards around that concern.

There was also considerable debate on, and practical solutions offered for, the clauses that dealt with self-administration, yet all suggestions were ignored by the minister and the government. If the minister was in the chair, he ignored them; anybody in the chair representing the minister ignored those recommendations and suggestions. I focused a fair bit on one issue relating to clauses 57 and 64 around self-administration, where the patient was to appoint a contact person, and the role of that contact person. I made the point that the contact person has a very serious role to play in self-administration. They are responsible for receiving, possessing, supplying and disposing of the prescribed substance, as it is called in the bill, which, of course, is the poison that would enable euthanasia to take place. But the only eligibility criteria offered for that contact person was that they needed to be 18 years of age. The minister was asked whether there would be any merit in having, at the very least, some restrictions placed on who could be selected to be that contact person—for example, limiting people who might have a criminal history, possibly even relating to poisons, or other criminal history that suggests they are not a decent citizen or somebody capable of fulfilling these duties properly—whether they should be excluded, and would the minister think of introducing some safeguards in the act in this regard, creating some restrictions around the eligibility criteria of the contact person, who has such an important role in the self-administered process. The minister simply answered, “That is not necessary”, without allowing the Parliament to explore options, methods and ways that doctors might actually be able to care for the patient to make sure that if the contact person is that patient’s loved one, they can still be intimately involved in the process, but they are not the contact person for the purposes of, as I said earlier, receiving, possessing, supplying and disposing of the substance. As I said, those types of recommendations or suggestions to the government were not done to slow up its bill, or to inhibit the bill from progressing, but to introduce some safeguards; however, they were ignored.

I also wanted this legislation to care for those in need. I thought we had to think very carefully about the impact the option of voluntary euthanasia would have on the mental health and decision-making ability of the depressed, the demoralised, the isolated, the lonely and the mentally ill. In my second reading contribution I posed the question: will voluntary euthanasia devalue life in the eyes of those who are demoralised when confronting a chronic or terminal illness? Those are very real concerns because, first and foremost, we must make sure that if a person is demoralised, they are cared for and receive the appropriate counselling support services as part of a suite of palliative care offerings to make sure their state of mental health is focused and in the right space so they can make clear decisions. They might not be depressed, but they might be demoralised. If one of those decisions down the track is to access voluntary assisted dying—voluntary euthanasia—so be it. At the very least, it would make sure that those people who are demoralised are offered the right palliative care options to get their head in the right space to be able to deal with that decision properly. I am very concerned about that. Again, that was an aspect of this bill that was brushed over. We often heard the government minister, or whoever was representing the government in the chair during consideration in detail, almost say that the fact that we were putting that forward as a key concern of constituents who had brought that to us was ridiculous and disrespectful to all the people who

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wanted voluntary assisted dying, rather than listening to us and considering that if that is a genuine concern of members of the community, how can the government better cater for that concern when drafting the bill to build it in. It could then open up the discussion on the floor of the chamber to put in measures for aspects of mental health in palliative care so that it is addressed and focused and in all good conscience, the government could say that it is offering voluntary assisted dying as an option, but is making sure that before a person goes down this path, they have had every possible mental and physical health care option provided to them so that when they are making a decision, they are making it with a clear and focused mind. I do not believe that any approach like that was taken in good faith in this chamber during consideration in detail. I think that is a shame, because so much more could have been achieved had the government done so.

To conclude, I do not think this euthanasia legislation will achieve what I said it should in my second reading contribution. I was of the view that, if as a society, we were going to go down the path of voluntary assisted dying or voluntary euthanasia, as I stated in my second reading contribution —

... it should be tightly controlled through the prism of supporting those who are hopelessly ill and experiencing unrelievable suffering with no chance of recovery ... because to cross this euthanasia threshold early brings with it inherent risks, as evidenced in countries around the world which have decided to move in this direction.

Having sat through the consideration in detail stage and having witnessed the government's failure to consider any sensible safeguards put forward by both Labor and Liberal members of Parliament in this chamber, I am of the view that this legislation is not safe and has let down those in our community who are in favour of having euthanasia as a choice. It is for that reason that I will not be supporting this bill.

**MR P.A. KATSAMBANIS (Hillarys)** [9.03 pm]: I would like to make a contribution to the third reading debate. In my second reading contribution, I outlined that I had a personal concern that the legislation that we are considering crosses the threshold beyond which I did not believe there existed appropriate legislative authority of the Parliament—that is, legislating a procedure for the taking a person's life. I do not want to traverse that area in my third reading contribution.

In my second reading contribution I also highlighted some of the concerns I had about the specific legislation that was put before our house. During the consideration in detail stage, I deliberately tried to focus solely on my duty as a legislator to examine the legislation before the house—firstly, to understand how it will operate in practice, clause by clause if necessary, and, secondly, to identify any gaps or concerns in the legislation so that they can be fixed and the legislation that passes is the safest and most appropriate legislation possible. I think it is critically important that we as a Parliament did that on this piece of legislation, because it addresses an issue of a legislative framework for the ending of a person's life. You cannot get much more serious subject matter than that. I think that, in the main, Parliament rose to the occasion. I thought the scrutiny of the legislation in consideration in detail was excellent and the scrutiny came from not only people who are opposed to the principle of the legislation, but also people who either expressed support for the principle contained in the legislation or have expressed support for the legislation presented. I thought that was the great value in this process. Often during consideration in detail the minister and the shadow minister ask questions, and the rest of the Parliament pays almost no regard to what is going on. For this extraordinary piece of legislation before us, we saw a greater number of members of Parliament taking an active interest in the consideration. I think that was a good thing and showed how well a Parliament can operate. It affirmed my belief in the primacy of the Parliament as the greatest decision-making body in any democracy.

During the consideration in detail debate, there was some angst and some elevated tempers. I understand that. I know some nights we were forced to stay here for a long time. I do not think that was wise. I have been in three different parliamentary chambers in two states and I know that we like to do that to ourselves on far too many occasions. I want to put on the record that as legislators, our profession as members of Parliament is in a bit of an existential crisis. If we want to attract the brightest and the best to this chamber, we should pay attention to the sort of ridiculous things we put ourselves through sometimes, including sittings that start at nine in the morning and go to 5.21 the morning after. That is the concern I have about those long sittings, as well as the health and welfare of members and staff, and, in particular, the ministerial staff who were at the table for long periods of time. I think we do our profession a disservice, because we paint ourselves as outliers and outsiders when we are not. No human being in the rest of the world is expected to work for 20-plus hours with nothing more than bathroom and meal breaks. As I said, we do that to ourselves all too often on both sides of the house and in all sorts of parliamentary chambers. But I digress from the subject matter of this third reading contribution.

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During the consideration in detail stage, some of the concerns I outlined about the specific legislation before us in my second reading contribution were amplified and magnified. I have to express my disappointment that as some of those concerns were highlighted by members of the house—not only by members who are opposed to this legislation, but also by members who voted for it in the second reading and will vote for it in the third reading—the position of the government was reflexively: no thanks. I think that was a disappointment. We will see what happens when the bill gets to the other place and we will see whether the legislation returns to this place at some time in the future and in what form it returns. I think we missed a really good opportunity as legislators—not as people in favour of or against this legislation, but to provide the best possible legislation as it is leaving this chamber to go to the other chamber. Some of the issues that came to the fore—I am not going to highlight all of them because they have been highlighted by other members—ought to have been fixed and it would have made for better legislation.

Other members have highlighted the concern about the genuine lack of independence of the two medical professionals, a coordinating practitioner and a consulting practitioner, required to sign off on the voluntary assisted dying process. Members highlighted the concerns about the possibility of financial interdependence, co-location and other factors that reduce the level of independence of those two doctors. Those issues were not addressed. The issue of some form of specialisation of a medical practitioner who diagnoses the terminal illness that triggers the process contained in this legislation also was not addressed. Any medical practitioner can offer a diagnosis. They do not have to have any specialisation or experience in that field. They also do not have to have any ongoing experience of dealing with the patient. I think that is a severe weakness of this legislation.

The issue around mental capacity of someone to make a valid decision under this legislation was also not addressed. We know that the Chief Psychiatrist and others made submissions on this issue to the Joint Select Committee on End of Life Choices. We know that the short-lived Northern Territory legislation some years ago required an assessment of capacity by a psychiatrist. That is lacking in this bill. I think when we marry up that lack of expertise in making an assessment about mental capacity with a possibility that a medical practitioner making that assessment may also not have any previous knowledge of the patient's medical history, that is a significant danger sign and it could have been addressed, but it was not addressed.

There were concerns about coercion of vulnerable people more generally outside whether they just plainly have the mental capacity to make a decision. Members raised serious concerns about the more coercive nature of undue influence or duress and the pernicious nature of coercion and how that is addressed. A solution to part of that concern was offered in very good faith by the member for Armadale—a man who supported the legislation on the second reading and who provided this chamber with an amazing speech, based on his own personal family experience, about why the bill needs specific protections for vulnerable people who may be prone to suggestion or coercion. He provided an elegant solution for that. As I said at the time, it was one of the most moving contributions that I have heard in this place. When I made those comments, I was not to know that it would be so moving as to convince certain people who supported the second reading, who I assumed would support the third reading and otherwise ignore the rest of the amendments that were put, to move across with him and vote in favour of that amendment. I commend him for his work and his contribution. I encourage the other place to consider seriously the amendment moved by the member for Armadale, because it would improve this legislation. The amendment was based on what is already contained in the legislation in Victoria, so it was not radical or very different from accepted practice.

Many parties expressed concern about the jurisdictional issue of the use of audiovisual means. We know that telehealth is really important here in Western Australia, particularly in regional and remote areas that, unfortunately, do not have easy access to medical practitioners. We still do not have an answer on that. We know it is a live question in Victoria and the Minister for Health has had to instruct medical professionals not to use telehealth services or audiovisual means until this matter is addressed. Really, the whole issue was batted away, rather than dealt with. I know that there is correspondence from the Attorney General to the federal Attorney-General but no indication of what that answer may be and no indication of what needs to be done to ensure that the legislation is safe from the jurisdictional question that remains.

The issue of palliative care has been well traversed. I think it is a genuine concern. Good palliative care ought to be available to Western Australians irrespective of whether this legislation is in place. It should not be an either/or. We should strive to provide good palliative care as a First World state that wants to pride itself on having a first-class medical system. Unfortunately, as has been highlighted during the debate, we are nowhere near that here in this state, and very little has been done to improve it. I know some has been done. I commend the government for putting more funds towards it, but we are still a long, long way away from being in a position to say that we offer good palliative care and it is a genuine option for all people in this state who need it. In my contribution to the

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second reading debate, I offered my personal experience of palliative care and I not only said how good it can be for relieving pain and extending quality and length of life, but also highlighted how expensive it, unfortunately, can be. It is beyond the realms of a lot of people in this state unless it is provided by our public health system. It is not an issue in only regional and remote areas, as many members have pointed out, including me; it is also an issue in the suburbs.

The further away we get from our tertiary hospitals located close to the CBD in Perth, the more concerning the lack of availability of palliative care becomes. It is a genuine fear that in the absence of good-quality and readily available palliative care, any options that hasten the end of life may, unfortunately, become the most readily available form of pain relief for people. If that happens, that would be a shame, and it would be a horrific outcome for, as I said, a state that prides itself on having first-class health care, because it would highlight a failure in our health care.

Those are some of the issues that I wanted to highlight that raise concerns that the legislation before us is not as safe as it could be and could be improved. I want to thank all the members who have participated in this debate. In particular, I want to thank all the members who participated in its scrutiny at the consideration in detail stage. The member for Girrawheen did a sterling job. She has been praised by others but I want to add my admiration for her —

**Ms M.M. Quirk:** This is not helping my preselection!

Several members interjected.

**Mr P.A. KATSAMBANIS:** Yes; that is a concern. Just hearing that interjection from the member for Girrawheen is a concern; it is not about one particular political party or another, but about the political process whereby members are elected to this place and asked to exercise their vote according to their conscience.

**Mr R.R. Whitby:** It was made in jest.

**Mr P.A. KATSAMBANIS:** It is a concern if anyone has any fear that the exercise of someone's conscience in a vote as important as this one is held against them. I hope that is not the case. I hope that interjection was made more in jest; I really do.

As I said, in my second reading contribution, I made my position on the principles contained in this legislation crystal clear. But as a legislator, I think I owe it to my constituents and the public of Western Australia to scrutinise what this legislation purports to do and to make sure that it does it without unintended consequences. Unfortunately, it is on those grounds that this legislation has failed the consideration in detail stage. I said in my contribution to the second reading debate that if this legislation becomes law, I hope it provides the relief that those people who access it want it to provide without any unintended consequences. Unfortunately, from the process that we went through, everything that came out indicates to me that that concern has not been alleviated. In fact, as well intentioned as this legislation may be, it leaves vulnerable people open to exploitation and being forced and coerced into making choices that they would not have made without that force or coercion. Thank you.

**MR R.H. COOK (Kwinana — Minister for Health)** [9.20 pm] — in reply: Thank you very much for the opportunity to close off this very important and, as a number of members have observed, very historic debate. My second reading speech and my response to the second reading debate was very technical, so I want to take the opportunity in my brief speech tonight to acknowledge my aunt Ethel Mary, who left us and was laid to rest during the period of this debate. She was able to access palliative care services at Bethesda Hospital. God bless her soul. Although there has been some commentary about how often I have been in the chamber, it was decided by the family that I should be in the chamber for the debate rather than go to her funeral. I want to acknowledge her and to give my apologies for not being able to send her off properly.

From the outset, can I also commend all members of this place for their careful and thoughtful consideration of the Voluntary Assisted Dying Bill 2019. I think we have done credit to ourselves. I remember receiving counsel from the Minister for Health in Victoria who ushered a similar bill through that Parliament. She made observations about how difficult and quite aggressive the debate was. I think we have done a great job in making sure that we have communicated our views passionately, but with a level of respect, decorum and good faith in the way people have conducted themselves. Members have shared deeply personal stories about their families and constituents. We have not all agreed on every issue, but opposing views have been expressed in good faith and, as a whole, with great respect. I join other members in acknowledging the member for Girrawheen who did more work than all those who rigorously cross-examined this bill. I commend her for the research and effort that she put into scrutinising this bill.



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I want to acknowledge the difficult stories that people brought to this place. There were some pretty tough stories and I know that a lot of people left, as they say in sporting parlance, a lot out on the field in relation to this bill. It is a difficult debate and from that perspective it was really important to have those stories brought in here because it laid bare just how personal and important this debate is.

The community has been clear that there is a need to go beyond palliative care services to provide Western Australians with the genuine choices they require to experience both a fulfilling life and respectful death without unnecessary suffering. As a number of members have observed, 88 per cent of Western Australians are in favour of voluntary assisted dying. Many have expressed their support for this bill and are watching us carefully to make sure that we do as they wish. Only a small number of people will be eligible to access voluntary assisted dying at the end of their life. As I indicated in my second reading speech, Western Australians should be supported in making informed decisions about their medical treatment and they should be able to choose to spend their last days surrounded by loved ones, coherent and without pain and ideally at home. This is the rational choice. The need for this was clearly identified by the Joint Select Committee on End of Life Choices during its extensive inquiry. In its report “My Life, My Choice”, the committee recommended that the Western Australian government draft and introduce a bill for voluntary assisted dying. The Parliament has been on a journey as many people have observed, but we should not forget that the whole community has been on this journey as well, many for a longer time than members of Parliament in this chamber.

The development of this bill occurred through three consultative means. Firstly, recommendations were made by the Joint Select Committee on End of Life Choices. The committee was established by the Western Australian Parliament in 2017 and the committee undertook an inquiry into the need for laws in Western Australia to allow citizens to make informed decisions regarding their end-of-life choices. Significant public consultation was undertaken by the committee in the development of its report. Over 700 submissions were received from individuals, peak bodies and organisations, as well as the Department of Health. Secondly, recommendations were made by the Ministerial Expert Panel on Voluntary Assisted Dying in its final report, which was tabled in June 2019. In March this year, the panel commenced public consultation on a number of voluntary assisted dying-related issues through the release of a discussion paper, public forums and key stakeholder roundtable meetings. This involved more than 1 400 interactions with community experts. Finally, consultation was conducted by the Department of Health on policy, procedural and justice-related matters that were generally outside the scope of issues being considered by the panel. These matters were discussed in detail with agency stakeholders within some of the panel-led roundtables and by other consultative matters. The Department of Health led a comprehensive and careful process to ensure that we have benefited from the best advice for the bill.

I acknowledge the members of the joint select committee for their considerable efforts and recognise the extensive work undertaken by the committee. Its report paved the way for this landmark piece of legislation. In particular, I would like to acknowledge the outstanding efforts of the member for Morley, chairperson of the joint select committee, and the deputy chair, Hon Colin Holt, MLC, for their dedication and leadership. I would also like to thank the ministerial expert panel for its hard work and dedication. Its members listened to wideranging community views on this important and significant issue and reviewed a broad range of research both from Australia and overseas. The panel's final report was a vital component in drafting the compassionate and safe legislation that has been put before members in Parliament. I would specifically like to recognise the remarkable work of Malcolm McCusker, AC, QC, as chairperson of the panel and for his continued advice to support the parliamentary debate. I think everyone would agree that his service to the public has been outstanding on this issue and I am sure I join all of you in thanking him for his work.

Members: Hear, hear!

**Mr R.H. COOK:** The bill was introduced on 6 August and I note that there are variations to the theme of how long the bill has taken to pass, but it has had between 67 and 70 hours of debate, including 46 hours to consider and debate the 184 clauses contained in the bill. It has properly undergone extensive scrutiny and is now ready for consideration by the house of review. I would like to acknowledge the tireless effort of my advisers, including Ms Daphne Fernandes, Ms Amanda Bolleter, Ms Lisa Furness, Ms Carol Conley and Ms Marion Huntly. I would particularly like to thank the hardworking staff at Parliament including the clerks and the chamber staff, catering, security, Hansard and building management who have kept the house running as we considered the legislation during the debate.

Much has been said in this place about palliative care. Palliative care should be a genuine choice for Western Australians. The McGowan government is committed to improving and strengthening palliative care so that people across the state have access to high-quality care at end of life. As an indication of our commitment, we have pledged an additional \$41 million for palliative and end-of-life care in the 2019–20 budget across the forward estimates. The

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bill includes clear reference to palliative care. Both the coordinating doctor and the consulting doctor must—I repeat, must—inform the person of all treatment options including palliative care treatment options. Any health practitioner involved in voluntary assisted dying must have regard to the principles enshrined in the bill.

Clause 4(1)(d) enshrines the principle that a person approaching end of life should be provided with high-quality care and treatment including palliative care and treatment to minimise the person's suffering and maximise the person's quality of life. This bill is for the small group of people for whom palliative care is ineffective.

It is also important to note that in the context of this debate, members are not considering voluntary assisted dying instead of palliative care; they are considering the compassion we should show those people for whom palliative care does not relieve their suffering. As I noted in my second reading speech, the government recognises the importance of all end-of-life care. The bill does not create a lower standard of care for people who are coming to the end of their lives. We are not replacing palliative care; we are providing another option for those who are dying.

There has been much commentary about the amendments that were put forward in the consideration in detail stage of the bill and some of that debate has been characterised as a failure of democracy in this chamber. It is simply a fact that the government believes that this is very good legislation, and we respectfully disagreed with the amendments that were put forward in this chamber. That is not to criticise the intent of those who moved those amendments. I think we all respect and recognise the passion that those members felt in moving them. But, as I said, we respectfully declined the opportunity to adopt those amendments. We believe that this is very good legislation; we believe it is very safe legislation.

Voluntary assisted dying is a significant issue for Western Australia. I thank every member of the Legislative Assembly for sharing their personal experiences with the chamber and for their valuable contributions to this crucial debate. Many people across the community who have had their parents or loved ones pass away in agony want something done, and that is what this is about. This legislation will bring relief for those who are suffering at end of life.

This is an important occasion. We are one step closer to providing safe and compassionate legislation to end the most severe suffering of those Western Australians who are currently dying without genuine choices. The bill is safe. The bill is compassionate. It is voluntary at all stages. It is a choice at the end of life—a choice only for those who decide they no longer wish to endure their unbearable suffering. Who are we to deny the option of such relief to those who we know experience such suffering? It is a choice we offer, respecting the views of the community and respecting the rights of everyone. It is the essence of compassion.

I am confident that this bill will now receive the endorsement of the Legislative Assembly and move to the other place. I know all members of the Legislative Council will undertake their review of the bill respectfully and in good faith. After all, that is nothing less than the community expects from us.

I commend the bill to the house.

Members: Hear, hear!

*Division*

Question put and a division taken with the following result —

Ayes (45)

Ms L.L. Baker  
Mr I.C. Blayney  
Dr A.D. Buti  
Mr J.N. Carey  
Mr V.A. Catania  
Mrs R.M.J. Clarke  
Mr R.H. Cook  
Ms M.J. Davies  
Mr M.J. Folkard  
Ms J.M. Freeman  
Ms E.L. Hamilton  
Mr T.J. Healy

Mr M. Hughes  
Mr D.J. Kelly  
Mr Z.R.F. Kirkup  
Mr F.M. Logan  
Mr W.R. Marmion  
Mr M. McGowan  
Mr J.E. McGrath  
Ms S.F. McGurk  
Ms L. Mettam  
Mr D.R. Michael  
Mr K.J.J. Michel  
Mr S.A. Millman

Mr Y. Mubarakai  
Mr M.P. Murray  
Mr K. O'Donnell  
Mrs L.M. O'Malley  
Mr P. Papalia  
Mr S.J. Price  
Mr D.T. Punch  
Mr J.R. Quigley  
Mr D.T. Redman  
Ms C.M. Rowe  
Mr P.J. Rundle  
Ms R. Saffioti

Ms J.J. Shaw  
Mrs J.M.C. Stojkovski  
Mr C.J. Tallentire  
Mr D.A. Templeman  
Mr P.C. Tinley  
Mr R.R. Whitby  
Ms S.E. Winton  
Mr B.S. Wyatt  
Ms A. Sanderson (*Teller*)

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Quirk; Mr John McGrath; Mr Dean Nalder; Amber-Jade Sanderson; Mrs Alyssa Hayden; Mr Sean L'Estrange;  
Mr Peter Katsambanis; Mr Roger Cook

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Noes (11)

Mrs L.M. Harvey  
Dr D.J. Honey  
Mr W.J. Johnston

Mr P.A. Katsambanis  
Mr A. Krsticevic  
Mr S.K. L'Estrange

Mr R.S. Love  
Dr M.D. Nahan  
Mr D.C. Nalder

Ms M.M. Quirk  
Mrs A.K. Hayden (*Teller*)

Question thus passed.

Bill read a third time and transmitted to the Council.

[Applause.]

*House adjourned at 9.37 pm*

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