

Hon Peter Collier; Hon Stephen Dawson; Hon Rick Mazza; Hon Tjorn Sibma; Hon Dr Steve Thomas; Hon Aaron Stonehouse; Hon Alison Xamon; Hon Jacqui Boyde; Hon Colin Tincknell; Hon Nick Goiran; Hon Sue Ellery; Hon Diane Evers; Hon Kyle McGinn; Hon Simon O'Brien; Hon Martin Aldridge; Hon Alannah MacTiernan; Hon Michael Mischin; Hon James Chown; Hon Colin Holt; Hon Donna Faragher; Hon Robin Chapple; Hon Martin Pritchard; Hon Adele Farina

VOLUNTARY ASSISTED DYING BILL 2019

Committee

Resumed from an earlier stage of the sitting. The Deputy Chair of Committees (Hon Adele Farina) in the chair; Hon Stephen Dawson (Minister for Environment) in charge of the bill.

Clause 81: Notification of death —

Committee was interrupted after the amendment moved by Hon Colin Tincknell had been partly considered.

Hon PETER COLLIER: I have a couple of questions because I am a little perplexed about this clause. When a person dies, their cause of death is on their death certificate. If the person suffers a heart attack, the matter is referred to the coroner, whereas a car accident might have resulted in death following a head trauma. If this bill becomes law, we will have voluntary assisted dying. If someone makes a decision to go down the voluntary assisted dying path because they have a terminal disease—say, cancer—first of all, what will appear on their death certificate?

Hon STEPHEN DAWSON: The answer is “cancer”, honourable member.

Hon PETER COLLIER: I have a bit of an issue with that. I have no doubt that cancer would have taken that person's life, but had that person taken the voluntary assisted dying substance on 1 December, they would have died as a result of taking the substance, not as a result of the cancer.

I do not want to be self-indulgent, but I will for one moment. I mentioned this in a previous contribution. On two occasions, my mother was provided with a diagnosis of terminal cancer—one in 1976 and the other in 1989. She turned 86 years of age two months ago. Had she gone down the voluntary assisted dying path, if it were available at that time—I can guarantee members she would not have—she would not have died from cancer of the uterus or lung cancer; she would have died from voluntary assisted dying. She is alive and very well today. The minister probably does not even need to answer this; it is a comment more than anything: when push comes to shove, most people who sent me correspondence in support of voluntary assisted dying have said, “It's my body. I want control. I want to be empowered. It is my decision. It's not for you to make the decision. It's me who has to make the decision; I want to make that decision.” I respect that a person can decide whether to go down that path, but in 10, 20 or 30 years' time, when their grandchildren and great-grandchildren reflect, they will know that was their decision to make. As Hon Alison Xamon said, we do not want to stigmatise it. We do not want it to be a dirty, dark secret that a great-grandmother went down the voluntary assisted dying path: “Oh no, she died of cancer.” “Actually such-and-such from school said that she didn't; she actually died of voluntary assisted dying.” There is a profound difference. If they make that decision, that is a decision that they made, hand on heart. They wanted to go down that path because they did not want any more pain, agony or despair. They made that conscious decision to say, “I'm going down the voluntary assisted dying path.” Rather than the death certificate stating that their great-grandmother died from cancer, it will state voluntary assisted dying. But do members know what? That was her call; she died with her family around her, just like she wanted. That was the pathway that she decided to take.

At this stage, if we do not have that on the death certificate, quite frankly, I do not think that is an honest, transparent reflection of that person's death. I honestly do not. By design, as Hon Alison Xamon said, we will create a stigma around voluntary assisted dying. I do not think that people who are supportive of voluntary assisted dying would support that. They want to know that that is their call; it is their decision. It is not a doctor's decision. It is no-one else's decision: “It is my decision. I've made that decision. In the years to come, my children, my children's children and their offspring will know how I passed away.” The minister has answered my question. I do not think that that person will have died of cancer; I think that that person would still be alive on 2 December if they had not taken the substance on 1 December. I will be supporting the amendment.

Hon STEPHEN DAWSON: I know that the member was making a statement rather than seeking further comment, but I think it is important that I comment. In Western Australia currently, the disease or condition directly leading to death is entered as the cause of death on the death certificate. Treatment options, such as terminal sedation at the end of life—which occurs when the patient is sedated to manage their symptoms adequately—are not recorded as the cause of death; nor is the decision to turn off a life-support machine or the patient's decision not to eat or drink. They are not entered as the cause of death on the death certificate. I want to further say that no other jurisdiction's legislation dictates that the cause of death on the death certificate is to be voluntary assisted dying. Most legislation is silent, but four jurisdictions in the United States stipulate that the underlying cause of death is the terminal illness. The Victorian legislation requires notification to the registrar only, but we are aware that, in practice, the underlying cause of death is recorded as the terminal illness, and additional information about voluntary assisted dying is

Hon Peter Collier; Hon Stephen Dawson; Hon Rick Mazza; Hon Tjorn Sibma; Hon Dr Steve Thomas; Hon Aaron Stonehouse; Hon Alison Xamon; Hon Jacqui Boydell; Hon Colin Tincknell; Hon Nick Goiran; Hon Sue Ellery; Hon Diane Evers; Hon Kyle McGinn; Hon Simon O'Brien; Hon Martin Aldridge; Hon Alannah MacTiernan; Hon Michael Mischin; Hon James Chown; Hon Colin Holt; Hon Donna Faragher; Hon Robin Chapple; Hon Martin Pritchard; Hon Adele Farina

included on the medical certificate of cause of death. The public extract issued for a death by the Registrar of Births, Deaths and Marriages does not make reference to voluntary assisted dying.

Hon RICK MAZZA: I also support this amendment. To me, the Births, Deaths and Marriages recordkeeping is an unemotional record of fact. The bottom line is that if somebody has elected to use voluntary assisted dying as a means of ending their life, that is what should be recorded on the death certificate. We have already, in this bill, stated that voluntary assisted dying is not suicide. Now, we do not want to state on the death certificate that someone has accessed voluntary assisted dying. I do not think we should disguise anything here. At the end of the day, this bill becomes an act and law as part of our system, so let us be honest about it. If somebody has elected to use voluntary assisted dying as a means of ending their life because of an underlying disease, then let us have that on their death certificate. I am not quite sure how the state records laws operate in putting things on death certificates. I have no problem with an underlying issue such as that the patient accessed voluntary assisted dying due to cancer. I am relaxed about that, but I think that as the actual reason for a person's death, it is very important that we have a record of fact.

Hon TJORN SIBMA: I might add my voice very briefly to the chorus, and then end with a question to the minister. Part of the justification for the entire legal regimen is to provide transparency and greater understanding of issues at the end of life. I cannot fathom how the amendment moved by Hon Colin Tincknell would in any way compromise the operation of the legislation or its accessibility to people who are eligible to utilise it. I seek from the minister some understanding of whether the proposition as put would serve in some way to disincentivise people from accessing this regimen. I would find that difficult to believe, but I am trying to understand the operating motivation underlying the opposition to this amendment. I also reflect that, on the supplementary notice paper, there is a new clause 160A on the establishment of a parliamentary committee to look into these kinds of issues. I do not want to foreshadow too much, but I intend to support that motion because I am keen to see accountability, and I think that this is a necessary measure to ensure that a committee, if it is supported and formed in some way, actually has an external data point to validate what is actually transpiring in the state of Western Australia. Once again, to the minister: what would be the practical impediment or the operational problem with accepting the amendment put by Hon Colin Tincknell?

Hon STEPHEN DAWSON: In answering that question and speaking against the amendment moved by Hon Colin Tincknell, the intent of clause 81 of the bill is to prevent circumstances in which the information is released into the community by persons who may see the cause of death on the medical certificate, which is provided by the medical practitioner to a person making funeral arrangements. For cultural and faith-based reasons, it would not be appropriate for information about a patient accessing voluntary assisted dying to become more widely known by several communities. Such knowledge could cause distress or negative interactions between family and/or community members. This sentiment was reflected in the consultation led by the Ministerial Expert Panel on Voluntary Assisted Dying and the Department of Health. The ministerial expert panel recommended that none of the death certificate documents include information pertaining to voluntary assisted dying. Instead, it recommended that a separate reporting mechanism should be used whereby the doctor should notify only the Voluntary Assisted Dying Board. The panel's concern was that if any of the current death certification documents were leaked or inadvertently shared by a third party such as a funeral director, the knowledge could cause distress or negative interactions between family and/or community members. The role of the Voluntary Assisted Dying Board to collect accurate statistics and of record keeping will assist to address views espoused in public consultation led by the ministerial panel that it was vital that data should be maintained.

In relation to the comment about hiding information, it is not the intention of the provision in the bill to somehow enable the hiding of information about voluntary assisted dying. Rather, clause 81(2) makes it clear that this information is to be collected albeit through a more secure and respectful means.

Hon Dr STEVE THOMAS: I know that this is a popular clause. I was happy to wait for a little while until I heard that particular comment. I would like to get something straight. The minister just said that for those people in a religious community for whom suicide is not accepted and is a sin, the intent of this clause is to make sure that those religious organisations do not find out, perhaps in the process of a burial. The government is suggesting that the reason "voluntary assisted dying" cannot be put on a death certificate is that someone might have to tell the truth to a religious community that opposes it. If that is what I just heard, I think that is an immensely bizarre response. I do not understand how keeping the cause of death secret from an organisation for whom it is a tenet of faith actually serves anybody. During my speech in the second reading debate, I said that this bill is not a question of religion. If someone does not believe in voluntary assisted dying, whether we call it suicide or not, they should not go through with it. If they are happy to go forward, it is not a religious issue; it is not a religious question.

Hon Peter Collier; Hon Stephen Dawson; Hon Rick Mazza; Hon Tjorn Sibma; Hon Dr Steve Thomas; Hon Aaron Stonehouse; Hon Alison Xamon; Hon Jacqui Boydell; Hon Colin Tincknell; Hon Nick Goiran; Hon Sue Ellery; Hon Diane Evers; Hon Kyle McGinn; Hon Simon O'Brien; Hon Martin Aldridge; Hon Alannah MacTiernan; Hon Michael Mischin; Hon James Chown; Hon Colin Holt; Hon Donna Faragher; Hon Robin Chapple; Hon Martin Pritchard; Hon Adele Farina

The response from the government is that for those who want to have a bet each way, it will hide what they died from. I have sat here and received non-answers to economic questions for weeks, and I am used to not getting answers, but that is the most bizarre answer that I have heard in this entire rather bizarre debate. I am not sure how the government can justify that. It is now on the record as saying its intent is to keep secret from those organisations that hold this as a tenet of faith what has gone on. That is bizarre.

I turn to the substance of the amendment. I was not inclined to support Hon Colin Tincknell's amendment until I heard the very good comments of Hon Alison Xamon, who convinced me to both support the amendment and make a short address on this. The reason for that is if voluntary assisted dying is such a positive issue in the community and is to be supported as a good thing, why is the government ashamed of it to the point that it will not put it on a death certificate? Why is it so negative that we cannot say that this is what happened and put it on the death certificate, but we think it is a good outcome? Hon Peter Collier raised this when he said it was an issue of pure truth. I think that was a particularly good contribution. It may be the truth that the person's death was caused by the taking of a substance, but if it is not caused by the taking of that substance this whole bill might as well not exist. The death was caused by the taking of a substance. We do not know whether the death might have occurred one week, two weeks or 10 weeks down the track following that, or there might have been a remission or death might not have occurred at all.

Hon Peter Collier: That happened to my mum.

Hon Dr STEVE THOMAS: That is right. The person might, unfortunately, walk out the next day and be run over by a bus and the cause of death would be something completely different. The only thing that is a fact —

Hon Alannah MacTiernan: Currently, there are many people whose doctor provides them with terminal sedation. It is exactly the same.

A member interjected.

Hon Dr STEVE THOMAS: Oi! This is my interjection, thank you!

Hon Alannah MacTiernan: Exactly the same argument could apply. Here we are talking about the underlying disease. It is not recorded on their death certificate that these people had terminal sedation.

Hon Dr STEVE THOMAS: That is right, except, long-term sedation is not terminal. It does not actually cause the death of the patient. If that patient is deliberately overdosed, it could quite accurately be put on the death certificate that this patient died of an overdose of an opiate-sedative combination. I said in my second reading contribution that that is legal right now. If a medical practitioner needs to increase the patient's dose for pain relief and dissociatives to a point—a combination of the valium-pethidine mix, whatever we want to go to—that may well cause respiratory suppression and death. The medical practitioner can put on the death certificate that these high doses to treat this disease were the cause of death of that patient—absolutely. That happens now. However, the point made that long-term sedation is the same as a deliberate cause of death is not true. At the end of this process, I come back to the fact that, surely, if it is a good thing, this chamber would not object to the truth being written down. If we are too ashamed to have the truth written down, what level of debate are we truly having about the bill before the chamber? I am not here to try to prevent people from engaging in this process, but, surely, if people believe in it, they will say, "This is what I did because this was my belief", and they would be happy to have the truth written on the death certificate. Every other component of the debate I have heard so far varies from the trite to the bizarre. If people believe this is a good thing, surely they cannot be opposed to having it written down.

Hon AARON STONEHOUSE: I do not think there is much more I can add to this debate because I think it was pretty well canvassed by the last two or three speakers. However, I would like to quickly observe that we are going to quite a great effort to pass a bill to allow for voluntary assisted dying. We are having extended sittings. We will be here all night tomorrow and Thursday to try to get through this bill before Christmas. We are going to such great efforts to allow voluntary assisted dying, but here is a clause that will cover up what actually happens. I find that rather concerning. We should not be trying to suppress the truth through legislation. I think it is undesirable to compel medical practitioners to, effectively, lie on an official record. What makes it worse is that we are compelling medical practitioners to lie on an official record because we are concerned about offending people with certain religious or cultural sensibilities. I think that is a step too far. I think it was well summarised by Hon Dr Steve Thomas a moment ago.

That is, essentially, what we are trying to do. Because certain religious or cultural groups do not approve of voluntary assisted dying, we will compel medical practitioners to lie on an official record. I really do not think that is how we should be going about our business here. The records should be accurate and truthful and their integrity should

Hon Peter Collier; Hon Stephen Dawson; Hon Rick Mazza; Hon Tjorn Sibma; Hon Dr Steve Thomas; Hon Aaron Stonehouse; Hon Alison Xamon; Hon Jacqui Boydell; Hon Colin Tincknell; Hon Nick Goiran; Hon Sue Ellery; Hon Diane Evers; Hon Kyle McGinn; Hon Simon O'Brien; Hon Martin Aldridge; Hon Alannah MacTiernan; Hon Michael Mischin; Hon James Chown; Hon Colin Holt; Hon Donna Faragher; Hon Robin Chapple; Hon Martin Pritchard; Hon Adele Farina

be maintained. Obviously, it would be inappropriate for anyone to leak information from an official death certificate about how somebody died. But let us not forget that that kind of thing can happen already. People can die in the most violent and horrific means and, currently, that is at least recorded on their death certificate.

I take the point that was raised by way of interjection earlier that if someone dies after having some kind of sedation, sedation may not be listed as the cause of death; the underlying medical condition may be listed as the cause of death. Just because that is the current practice, it does not mean that we should embark on that path with this bill. If it were up to me, all death certificates would reflect accurate and truthful information. Just because incomplete information is being listed currently does not justify us going down that same route when we have an opportunity to correct the record and point medical practitioners in the right direction. I absolutely support this amendment and I look forward to its passage.

Hon ALISON XAMON: I just want to clarify something. Currently, death certificates are accurate. They often have two components. Firstly, they always describe the physiological cause of death—always. Secondly, if there have been additional circumstances around the death, they are recorded, such as whether it was self-inflicted or was the subject of a homicide. That is the way that death certificates currently operate. There will be an initial assessment by the coroner about what has occurred physiologically, and often after further investigation or even an inquest, a codicil will be put on the death certificate. I know; I have seen them. That is the way that death certificates are written. They are done in that way so that we have a clear and accurate record of the circumstances under which someone has died. If someone were to avail themselves of voluntary assisted dying, as should be their right—I remind members that I am one of the people who are voting for this legislation—that would be included, but it would not be listed as the cause of death as such. The actual underlying physiological issues that led to them requiring voluntary assisted dying would be listed as the cause of death and then the circumstances under which they availed themselves of VAD would be articulated as part of the historical record.

In response to something that the minister said when he spoke about other jurisdictions, the thing I have found the most perplexing is that a specific provision in the bill precludes us from ensuring that the historical record is accurate. This is not about being silent. This is not about looking at whether there is a possibility for the coroner or a medical practitioner to make the decision to include this if they wish to; it specifically precludes it and says that we cannot allow the record to be maintained. I think that is a mistake, because if we accept that voluntary assisted dying is a legitimate avenue to take, there should not be stigma around it. I believe that this is a stigmatising provision. I also suggest that it might be a historical source of comfort to loved ones. For example, if the parent of a toddler died but they were too young to remember the circumstances, and the rest of the family did not want to talk about it, they might have simply a death certificate that describes a rather awful death or they might have a death certificate that describes a terrible underlying illness but that their parent died a peaceful death. I do not think that people are really connecting the fact that it could be a source of comfort for families to know that people have gone gently.

I also want to pick up on this idea that somehow the record of the facts is being expunged to assuage people's concerns about stigmatising deaths. We do not do that with suicide, and I have already made it clear why I distinguish between VAD and suicide. We do not do that with suicide and we do not do that with homicide, and we know that they can be highly stigmatising deaths. I do not accept the argument that somehow this is an entirely different category that requires us to make sure that we wipe this from history, even though the entire bill in front of us says that it is okay.

I am simply asking for the records to be accurate. I am also going to flag that I am one of the people who is inclined to flag a future amendment. I think this is a really important issue for us to keep revisiting. The one thing I want is to make sure that the data that is kept by the Registry of Births, Deaths and Marriages is accurate, and I think that we have an obligation to capture that historically at this time.

Hon JACQUI BOYDELL: Obviously, this has been quite a difficult issue for both the Joint Select Committee on End of Life Choices and the Ministerial Expert Panel on Voluntary Assisted Dying. During the break, I looked at the consultation process and, obviously, this was a very perplexing issue that was faced by people, particularly during the consultation phase of the ministerial expert panel. I think we can always find arguments for either side.

I find myself not in support of the proposed amendment for a couple of reasons. Ultimately, I think the difference between recording suicide and voluntary assisted dying on a death certificate is that the decision to access voluntary assisted dying is a private decision of the patient in managing their end-of-life care. They will get to the position of considering voluntary assisted dying because of the underlying illness that they have been diagnosed with. If they did not have that illness, they would not face having to make that decision. Just as a patient will make decisions

Hon Peter Collier; Hon Stephen Dawson; Hon Rick Mazza; Hon Tjorn Sibma; Hon Dr Steve Thomas; Hon Aaron Stonehouse; Hon Alison Xamon; Hon Jacqui Boydell; Hon Colin Tincknell; Hon Nick Goiran; Hon Sue Ellery; Hon Diane Evers; Hon Kyle McGinn; Hon Simon O'Brien; Hon Martin Aldridge; Hon Alannah MacTiernan; Hon Michael Mischin; Hon James Chown; Hon Colin Holt; Hon Donna Faragher; Hon Robin Chapple; Hon Martin Pritchard; Hon Adele Farina

with their medical practitioner, family and contact person in managing other aspects of their illness towards the end of their life, the decision to access voluntary assisted dying will be a private decision determined between the patient, their family, their medical practitioner and whomever they have those discussions with within their support network. For me, that is fundamentally the reason that the patient's decision about how they seek to manage their end of life should be respected. To me, this is not about hiding information from faith-based organisations—it is not about that at all. It is about protecting the patient, and the patient making the decision to protect their family so that they are not stigmatised by the patient's decision. The patient may be Catholic or from a different faith denomination, or their culture may not accept access to voluntary assisted dying. This is not about hiding the information that the patient has made that decision; it is about the patient protecting their family so that they are not stigmatised against or used for an organisation's political or social agenda. It is about making sure that the family members who remain are not used as an object in those agendas. That is where stigma comes in; it is attached not to the patient, but the family members who are left behind. For that reason, I do not support the proposed amendment.

Hon COLIN TINCKNELL: I moved this amendment because of some truths. One of the truths is that the Joint Select Committee on End of Life Choices was unanimous. It was a hard decision, but it was unanimous that voluntary assisted dying should be recorded on the death certificate. Another truth is that the ministerial expert panel was not unanimous in this. The panel debated it, but it was not unanimous in its decision when it was debating this issue. The Law Society of Western Australia has written about this, and it has an issue with it.

As Hon Rick Mazza mentioned, the Registry of Births, Deaths and Marriages is about the truth. It is about facts, not an emotional decision. If this legislation were to pass and become law, we must make sure that we have acted as truthfully as we can in doing so. Members talked about doctors assisting people to die comfortably. Once again, we are making a brand-new law that will come into place in the next few years and we have to do our best to get it 100 per cent right.

I will go through a couple of personal experiences. On Monday, I got a call to tell me that a good friend of mine had suicided. He hanged himself at work. After the investigation, the way that person passed away will be recorded. Whatever the circumstances of the death, they will be recorded correctly. It is not a nice situation, but that is the way it will be. Going back 17 years, my mother-in-law was given three months to live. If voluntary assisted dying had been around then, she would have taken that option because she believed everything the doctor told her. That is the sort of lady she was. She lived for another 13 years. She was very thankful for that extra 13 years. In the end, she died from cancer. That is how she passed away. If she had been recorded as dying from VAD 17 years ago, it would have been a mistruth. She would have known that, I would have known that and the family would have known that. The death certificate should record the truth. We come into this place, we speak our truth and we vote on that. I ask members who are 100 per cent behind VAD going ahead to consider this amendment because it needs to be added to this bill. It is an important and very, very honest amendment. I put it forward because we need to reflect the truth in this chamber every time we can. Thank you.

Hon NICK GOIRAN: With respect to the member, I rise to put to bed the myth propagated by Hon Jacqui Boydell that this was somehow an issue of contention, or confusion, for the Joint Select Committee on End of Life Choices. Nothing could be further from the truth, honourable members. Members need only look at page 228 of the Sanderson report, which states the committee's view —

Where an assisted death takes place it must be noted on death certification documents.

That is not the minority report; that is the report of the committee that the member for Morley chaired. Members can support or reject this amendment, but please do not do so based on incorrect information. This was not an issue of contention for the Joint Select Committee on End of Life Choices. The view of that committee is clearly stated at page 228. In contrast, I absolutely support Hon Colin Tincknell indicating and reminding us that the ministerial expert panel had a variety of views on this issue. The honourable member was correct when he stated that the Law Society of Western Australia has written on this issue. It has certainly written to me and I assume other members have also received correspondence from the Law Society in recent days or weeks on this issue.

My last point is that clauses of the government's bill, which we have passed until this point, support this amendment. I ask members to look at clause 7, which we have agreed to. What does clause 7 say? It says —

(1) The CEO may ... approve a Schedule 4 poison or Schedule 8 poison ...

What for? Clause 7 continues —

... for use under this Act for the purpose of causing a patient's death.

Hon Peter Collier; Hon Stephen Dawson; Hon Rick Mazza; Hon Tjorn Sibma; Hon Dr Steve Thomas; Hon Aaron Stonehouse; Hon Alison Xamon; Hon Jacqui Boydell; Hon Colin Tincknell; Hon Nick Goiran; Hon Sue Ellery; Hon Diane Evers; Hon Kyle McGinn; Hon Simon O'Brien; Hon Martin Aldridge; Hon Alannah MacTiernan; Hon Michael Mischin; Hon James Chown; Hon Colin Holt; Hon Donna Faragher; Hon Robin Chapple; Hon Martin Pritchard; Hon Adele Farina

How will the person die? It is because the CEO has approved a schedule 4 or 8 poison. Why? The government tells us in this bill, which we have all agreed to at clause 7, that it is —

... for use under this Act for the purpose of causing a patient's death.

What kind of substance is used? It is a voluntary assisted dying substance, but under no circumstances record that on the death certificate. That makes no sense whatsoever. Clause 26 of the bill requires the coordinating practitioner to inform the patient that the expected outcome of self-administering or being administered the substance is death. We are saying to the coordinating practitioner, "Under the law of Western Australia, you have to tell the patient that if they take this, the expected outcome is death." But do not put it on the death certificate. Clause 66(2) states —

The contact person for the patient must inform the coordinating practitioner for the patient if the patient dies (whether as a result of self-administering the prescribed substance or from some other cause).

Clause 72 contains labelling requirements for the voluntary assisted dying substance. An authorised supplier must attach a statement in writing to the relevant package or container in which the voluntary assisted dying substance is contained. What has to be on the package? It warns of the purpose of the dose of the substance. Why would we need to warn the person, other than that they are going to die after taking the substance? Paragraph (b) refers to the dangers of administration of the substance. There is a danger that a person will die if they take the substance. That is the point of the labelling requirements. Therefore, everything that we have done so far—clauses 7, 26, 66 and 72—tells the story that if a person takes this substance, the expected outcome is death. But now we get to clause 81 and we say, "But don't put it on the death certificate." Hon Colin Tincknell is absolutely spot-on with this amendment and he has my full support.

Hon SUE ELLERY: I have tried to stay out of the debate because I think that others who are part of the group supporting the bill are better able to articulate the arguments than I am. Two things strike me about this. I can understand people's judgement, I guess, that this is trying to hide something, but there are two compelling arguments for me. One issue is the point made by Hon Jacqui Boydell about the individual protecting their privacy. One of the words that has been used about this debate is "dignity", and I think this goes to people's dignity. The other issue for me is the notion that somehow there is no other way that information about the use of the provisions in this bill will be held to account. The bill does include provisions about information that is provided to the board so that there is a degree of information gathering to determine how and when the provisions will be used, and, I am sure at some point, will be used to provide advice if changes need to be made at some point in the future. Those are the two arguments that, in my mind, led to my decision. I listened to this part of the debate and although I can appreciate the arguments that have been put by those who are saying that somehow this is inconsistent with the position that we have taken on other elements of the bill, in fact I think it goes to the principle of human dignity. It is completely consistent, in my mind, with how that argument was developed. Therefore, for those reasons, I will not be supporting the amendment. I do not accept the argument that if we do not support the amendment, we are somehow not supporting truth. I do not think that is the case at all; I think that is too simplistic and superficial an argument to put about something that is deeply important to people. I think that misdescribes the debate that is being had. For those reasons, I will not support the amendment.

Hon DIANE EVERS: I have only a few points to make. As I said just the other day, the person is dying from their disease or illness; otherwise, they will not be eligible to take up the opportunity to use voluntary assisted dying. The person is dying. They do not know whether it will be in a week, a day, a month or an hour—it is coming. They know it is coming. They know they are in pain. They know that they want to relieve that pain in whatever way they can, and this is the way that they are choosing to do so. That person may have religious beliefs or values that say that they should not give up—that they should not accept this as a way to escape life. It may hurt them that they are even thinking about voluntary assisted dying, but they are thinking about it and they want to relieve their pain permanently. The person who is making this decision should have a right to privacy about that decision. As it is, they could starve themselves or refuse treatment. Refusing treatment does not get listed on a death certificate as the cause of death—the person died from their disease or illness. Why would we make somebody go through the horrors that this notification could bring?

Just last evening, I was talking to someone who said, "Thank you so much for what you're doing. My father starved himself to death when he wanted to end his life." Can you imagine just sitting there watching somebody die like that? I cannot. I do not want to ever be in that situation. We need to bring in voluntary assisted dying. If this amendment were to stop even one person from taking the comfort of having this as an option, it would be wrong. It would be wrong for that person and it would be wrong for all people for us to stand here and say, "No, it must be listed that you chose to end your life so that your offspring and your grandchildren can know that you made use of this." Sure, it would be nice to list on a death certificate that a person was peaceful when they died, but I do not believe

Hon Peter Collier; Hon Stephen Dawson; Hon Rick Mazza; Hon Tjorn Sibma; Hon Dr Steve Thomas; Hon Aaron Stonehouse; Hon Alison Xamon; Hon Jacqui Boydell; Hon Colin Tincknell; Hon Nick Goiran; Hon Sue Ellery; Hon Diane Evers; Hon Kyle McGinn; Hon Simon O'Brien; Hon Martin Aldridge; Hon Alannah MacTiernan; Hon Michael Mischin; Hon James Chown; Hon Colin Holt; Hon Donna Faragher; Hon Robin Chapple; Hon Martin Pritchard; Hon Adele Farina

that it is a requirement for our death certificates to say how much pain a person was in or was not in at their time of death. I think we need to vote against this amendment to make sure that people are not dissuaded from taking up this option by having to show that they gave up, that they could no longer take it and that they were too weak to last it out until the final breath that they might have been able to take had they taken every treatment available. I will not be supporting this amendment.

Hon KYLE MCGINN: While I was waiting to get the call, most of what I was going to say was actually said by Hon Sue Ellery and Hon Diane Evers, but I will put on the record that I have found listening to this part of the debate quite interesting. I heard Hon Nick Goiran's comments about clauses in the bill referring to the substance as being the cause of death of the individual. As Hon Diane Evers said, patients will be in this position because they are terminal—they are dying. There is a cause of death. They are going to die. In my view, that is why they will get access to the substance. It is not because it is going to kill them—they are already dying. If we are looking for accountability, I am pretty confident, from what the minister has said and what I have heard in other briefings, that the board will have details of all reported deaths. There will be a record of people who die from voluntary assisted dying. In my mind, the transparency will be there. I do not think that this amendment is needed. I think that privacy is important. If someone makes the decision to end their life in this way, they are dying anyway. Too many things would be affected if this was put on a death certificate. There is the family side of things and their social life—all that sort of stuff—and the potential to be remembered for something that the person did not want recorded on their death certificate. This was mentioned throughout the report of the Ministerial Expert Panel on Voluntary Assisted Dying. They are the reasons I cannot support the amendment.

Hon SIMON O'BRIEN: May I just point out to members what the question before us is about. That is not in any way to disassociate myself or, indeed, suggest that anybody else should be disassociated from the very compassionate comments we have heard just in the last half-hour or hour. The question before us right now is that the two lines should be deleted. The question is not about the manner in which someone will die in the sense of whether they will starve themselves, whether they have cultural inhibitions or whether someone will be upset by what is on a written record—it is about deleting two lines. The reason to delete the two lines is to avoid a situation in which we pass a law that says that, in future, when a responsible medical officer has to certify something, they will certify something false by law. That is what it is about. It would be totally reprehensible to pass such a law. That is what the question is about now. I have been encouraged by the degree to which I have heard members from various parts of the compass recognise that that is what it is really about. We are not going to have a vote on this amendment before we rise for a brief adjournment, so I hope members think about it before we come back and vote on it.

The DEPUTY CHAIR (Hon Adele Farina): I draw members' attention to supplementary notice paper 139, issue 17, which was distributed a little earlier during the course of the debate. Noting the time, I will leave the chair until the ringing of the bells.

Sitting suspended from 6.00 to 7.00 pm

Hon MARTIN ALDRIDGE: This is an interesting clause, one that has engaged quite a lot of members and will, perhaps, engage quite a few more after me. I have certainly entered into this debate and exercised my conscience at every opportunity, and I must say that on a few occasions I have found myself challenging the preconceived ideas that I had about particular aspects of this bill. This amendment is one that I thought I would naturally oppose, but having listened to members' contributions and having reflected on some of them during the break, I am now starting to doubt whether that is the right approach.

I want to identify the challenge that I have in trying to resolve this matter. Several references have been made by members to "My Life, My Choice: The Report of the Joint Select Committee on End of Life Choices". Fairly limited remarks on this matter were made in that report, but the committee still made its view quite clear in its publication. The report was the precursor to the Ministerial Expert Panel on Voluntary Assisted Dying and the bill before us. I want to very briefly read two relevant paragraphs from that report. I refer to paragraph 7.83 on page 223, which states —

The explicit inclusion of voluntary assisted dying as either the manner of death or a contributing cause of death on a death certificate would provide Western Australians with a means to monitor assisted dying and its effects on mortality trends.

Paragraph 7.85 goes on to state —

A record of voluntary assisted dying is essential for the regulation of the practice, together with accurate reporting of mortality trends and patterns. Accordingly, there must be appropriate amendment to each of the three relevant documents, above, and the provision of clear guidance to doctors.

Hon Peter Collier; Hon Stephen Dawson; Hon Rick Mazza; Hon Tjorn Sibma; Hon Dr Steve Thomas; Hon Aaron Stonehouse; Hon Alison Xamon; Hon Jacqui Boydell; Hon Colin Tincknell; Hon Nick Goiran; Hon Sue Ellery; Hon Diane Evers; Hon Kyle McGinn; Hon Simon O'Brien; Hon Martin Aldridge; Hon Alannah MacTiernan; Hon Michael Mischin; Hon James Chown; Hon Colin Holt; Hon Donna Faragher; Hon Robin Chapple; Hon Martin Pritchard; Hon Adele Farina

Those three relevant documents are outlined in paragraph 7.84 and are the medical certificate cause of death, the manual death registration form and the death certificate. Key recommendation 24 establishes the framework that the joint select committee recommended. One aspect of that framework related to death certification. At pages 228 and 229 the framework states, in part —

Where an assisted death takes place it must be noted on death certification documents.

The WA Government should amend the:

- a. Medical Certificate Cause of Death — completed by the doctor certifying cause of death;
- b. Manual Death Registration Form — completed by the funeral director to register a death; and
- c. The Death Certificate — issued by the Registrar of Births Deaths and Marriages,

to make provision for the inclusion of voluntary assisted dying as a contributing cause of death, and to provide guidance for doctors and others who complete each of the documents.

That was obviously the view expressed in “My Life, My Choice”, the August 2018 report of the Joint Select Committee on End of Life Choices.

Reference has also been made today to the views of the Ministerial Expert Panel on Voluntary Assisted Dying, which were, I must say, limited, although it dedicated probably a couple of pages to them in its “Final Report”, so it was slightly more expansive than the joint select committee. A paragraph on page 88 of that report states —

However, the Panel is mindful of the feedback it has received regarding concerns about third parties (such as funeral directors) who have links to the person’s (and their family’s) community becoming aware that a death has occurred through voluntary assisted dying and exposing the family to negative treatment. This feedback is applicable to the Medical Certificate Cause of Death, because this document is seen by third parties such as funeral directors.

The ministerial expert panel’s comments did not go to the fear that I have heard expressed in the chamber today of the patient not wanting to access voluntary assisted dying because, at some time in the future, that information will become public information. In fact, on my reading of this section of the ministerial expert panel’s report, its concern was about the treatment of patients’ families after the death. The panel did not expand much on that. It is a bit hard for me to perceive the negative treatment that a funeral director might visit upon the family of a person who has died as a result of voluntary assisted dying. Perhaps the minister can enlighten us about the concern that the ministerial expert panel was trying to address in that instance by dealing with clause 81 in the way in which it did.

With regard to members’ concerns about patients potentially not accessing VAD because of the information appearing in some way on their death certificate, that is certainly not a view that I have heard expressed by people in general throughout the course of this debate. People have been very willing to engage in this debate, and perhaps that is because they do not understand the detail; I think that is probably right. They support the concept, but they do not understand the detail. Certainly, I cannot recall a single person coming up to me to express a view or a concern about the medical certificate issue. In fact, the thinking of people who have engaged me on this is that this is a decision that they should have the personal right to exercise at a time of their choosing. That perhaps has led me to believe that they would not have any objection to people knowing that they had accessed voluntary assisted dying, but these are all observations.

When we commenced debate on this bill, I mistakenly thought that voluntary assisted dying would be listed as either the primary or a contributing cause of death. In fact, I mistakenly thought that the death certificate would state, “The person died from”, and then state the illness or disease they were naturally going to die from were it not for voluntary assisted dying, and then state the administration of voluntary assisted dying as a contributory cause of death. That was my mistake, because that is clearly not what clause 81 sets out, and it certainly takes a different path from the view formed by the joint select committee in its “My Life, My Choice” report.

I have one question on this proposed amendment and that is about a potential practical implication. In earlier parts of the consideration in committee of this bill, there was some talk about insurance. Can the minister provide any advice about whether the issue of insurance played any role in both the ministerial expert panel and the government landing on the position that voluntary assisted dying should not be cited on the death certificate; and, if Hon Colin Tincknell’s amendment were to succeed and voluntary assisted dying was the cause of death, what might be the practical implications for life insurance claims, for example? I ask the minister whether he can respond on that point, and perhaps provide elaboration on the different views taken by the joint select committee and the ministerial expert panel on whether voluntary assisted dying should be listed.

Hon Peter Collier; Hon Stephen Dawson; Hon Rick Mazza; Hon Tjorn Sibma; Hon Dr Steve Thomas; Hon Aaron Stonehouse; Hon Alison Xamon; Hon Jacqui Boydell; Hon Colin Tincknell; Hon Nick Goiran; Hon Sue Ellery; Hon Diane Evers; Hon Kyle McGinn; Hon Simon O'Brien; Hon Martin Aldridge; Hon Alannah MacTiernan; Hon Michael Mischin; Hon James Chown; Hon Colin Holt; Hon Donna Faragher; Hon Robin Chapple; Hon Martin Pritchard; Hon Adele Farina

Hon ALANNAH MacTIERNAN: While the minister is gathering his views and advice, I would like to make a couple of comments. Likewise, I find this a very interesting debate. Unfortunately, I will not be able to support Hon Colin Tincknell's proposed amendment, because that would have the consequence of making the cause of death the treatment that the person sought. Hon Alison Xamon put the argument that if we prevent any reference to voluntary assisted dying, we may stigmatise it. That is worthy of discussion. In all the debate around this amendment, that is the argument that has caused me to have some concerns about the current provision. As I have said, I will not be able to support Hon Colin Tincknell's proposition, because that would simply require—I think quite misleadingly—the cause of death to be VAD.

Hon Martin Pritchard spoke about the concerns that were raised by the joint select committee. The provisions that Hon Martin Aldridge read out are concerned with ensuring that there is a means of monitoring the dying with dignity legislation and that there is a record. To a very significant extent, that is now addressed by requiring reporting to the board, which will be the repository of that information and will keep those records and provide reports. The fundamental concerns that were raised by the joint select committee centred around ensuring that there was transparency—not transparency about the individual case, but about the rate of access, who was doing this and where it was occurring. That was the fundamental theme of the concerns raised by the joint select committee in this particular area. The question is: should we allow some reference to voluntary assisted dying, and is there any merit in the argument that if we prevent any reference to voluntary assisted dying, we may stigmatise it? That issue is worthy of concern.

However, at the end of the day, I have been persuaded by the arguments all around—Hon Jacqui Boydell argued this very well—that the fundamental issue here is privacy. For some people, this decision is not so difficult; for other people, it is a very difficult and challenging decision, and it might go against the grain of the community from which they come. To me, the person's privacy should be given primacy. That is a valid concern, given the way in which the death certificate has to be handed around, such as to the funeral director. The issues raised by the joint select committee have absolutely been addressed through the requirement to report to the board, which will have that record-keeping role.

I think that over time, this will cease to be an issue. However, at the moment, there are issues of community sensitivity. After deep reflection about this, I think a solid and substantial argument can be made, on the basis of privacy, that the fact that a person chose voluntary assisted dying should not be recorded on their death certificate. I also note, as I said by way of interjection to Hon Dr Steve Thomas, that people have terminal sedation, which no doubt hastens their death by a week, or sometimes two weeks. That is not recorded. People decide that they will starve themselves to death, and they are legally allowed to that. That is not recorded. People decide that they have had enough of chemotherapy, they are not doing that any more, and their demise comes more quickly than it otherwise would. That is not recorded. Therefore, for us to single out people who choose this way to end their pain and suffering is not the right approach. I appreciate that we have had a good and interesting debate on this. I have been thinking: are there issues here? It has been argued that a community might discriminate against a family because a family member did this. I do not think that is the best argument. The substantial argument is that this is a question of privacy for a person who has made this deeply personal decision. The state will have all the records that it needs to understand how this legislation is unfolding and how the practice of voluntary assisted dying is happening in reality.

The DEPUTY CHAIR (Hon Dr Steve Thomas): My goodness! Who has not spoken yet? Neither of you. I will go to Hon Michael Mischin, and then Hon Alison Xamon and Hon Jim Chown.

Hon MICHAEL MISCHIN: I have listened with interest to the arguments for and against. I will go back to some basics here. This provision in the bill requires whoever completes the death certificate to deliberately exclude relevant information. It is not a question of privacy and sensitivity and dignity. One would have thought that if I were to go to the extreme of suiciding, and leave all the evidence that I had done so because I have personal issues, whether psychological, medical or otherwise, and I want to put myself out of my misery and bare my soul in that fashion, would I have an argument for the coroner to say, "No, this was not a suicide; it was some underlying issue that created the problem"? Once upon a time, suicide was disguised because of the stigma attached to it. It was described as a misadventure and the like in order to avoid the very stigma and opinion that might affect families and might show a potential betrayal of one's religious beliefs and convictions. That is not the case now. We found our society and our knowledge and understanding of what is going on in society on some level of truth. Whether or not a medical practitioner required to report a death includes in the death certificate—sometimes 48 hours after the event, and whether or not they witnessed it—that there was an administration of a substance that led to that death, as well as the underlying cause that initiated that course of action on the part of the deceased, ought to be a matter for them. That is what the case is now. But with this legislation we are proposing to say, "Whatever you know about the circumstances, leave this bit out." I find that an astonishing proposition.

Hon Peter Collier; Hon Stephen Dawson; Hon Rick Mazza; Hon Tjorn Sibma; Hon Dr Steve Thomas; Hon Aaron Stonehouse; Hon Alison Xamon; Hon Jacqui Boydel; Hon Colin Tincknell; Hon Nick Goiran; Hon Sue Ellery; Hon Diane Evers; Hon Kyle McGinn; Hon Simon O'Brien; Hon Martin Aldridge; Hon Alannah MacTiernan; Hon Michael Mischin; Hon James Chown; Hon Colin Holt; Hon Donna Faragher; Hon Robin Chapple; Hon Martin Pritchard; Hon Adele Farina

The two arguments that have been presented are that it is somehow a matter of privacy and dignity. This bill is replete with comments about how voluntary assisted dying is not suicide, so there is no question of stigma there. We are told it is not even euthanasia, so there is no stigma there. We are told that the whole point of this bill is that, by availing themselves of the provisions in it, people could have a dignified death, yet we are somehow saying at the same time, "Leave out an element of the truth about how it happened out of respect for people's dignity." We are not talking about palliating people's sense of upset that they have taken this course. The point of it is that there is some accountability to the rest of the community about how this came about. For my part, whether we simply delete the words and substitute some appropriate formula is by the bye, but we should not instruct and demand that someone completing the certificate ought to leave out a material and relevant fact, which is what substance was administered to this patient, to this deceased, in the lead-up to their demise. That, as a matter of principle, is wrong.

Where do we draw the line with this? Will we next amend the Coroners Act 1996 so that anything that might upset people ought not to be published on a death certificate out of some kind of respect for sensitivities that may or may not be there? Hon Diane Evers suggested that someone might be deterred from taking advantage of voluntary assisted dying if they thought that it would appear on their death certificate. I have to say that I find that a wild proposition, with all due respect. If someone is devoutly Catholic, for example, yet they resort to this extreme course because they are in such pain, and they are suffering so much, the last thing they will be worried about is what is on their death certificate. As for the sensitivities of the families, this bill is about choice for the deceased; it has nothing to do with the families. The primary consideration is what happens to the deceased and the accountability to the state, as representative of the public good.

As I mentioned, there seem to be numerous references in the bill itself to speaking honestly about death. I turn members' attention, for example, to that very early clause that we debated at length, clause 4(1)(f), which states —

a person should be encouraged to openly discuss death and dying, and the person's preferences and values regarding their care, treatment and end of life should be encouraged and promoted;

Yet, along with the other tendentious phrases that are used in the second reading speech and elsewhere, we have a disguise of that; we want to conceal it. Now we are going even further. We are demanding that whoever has the responsibility of completing a certificate actually does not include relevant information if that person feels it is relevant and material to understanding the cause of death. As a matter of principle, I find that wrong. Whether we replace the terms that are being deleted, as proposed by Hon Colin Tincknell, with the formula that he has picked or whether we replace them at all is beside the point. Perhaps we should just leave it blank and allow what is currently the case in death certificates—the judgement of those who complete it and the exercise of their good faith that we currently rely upon. But I will oppose the idea that we ought to tell people with that responsibility that they should leave out some reference that is material and that they think is relevant. That is wrong.

Part of this debate may very well be turning on some perhaps misunderstandings or imperfect understandings. For my part, it would be useful if it were on the public record in this chamber and we could understand what goes into a death certificate. How much detail is put into a death certificate? Likewise, what sort of detail needs to be put into a certificate under the Cremation Act 1929? A form is prescribed that has a variety of detail in it. I am not sure how all that information is required on a legislative basis, but where do death certificates come from legislatively and what is required? A later provision in the bill—we will get to it—ensures that these deaths are not reportable to the coroner. That limits the level of inquiry. What has to go into a death certificate? How much detail has to go into a death certificate? Is this going to make any difference and is it going to make any material difference? Just so we can understand the debate, I would appreciate the minister's assistance in that, and then we will all be working from the same information. There may be some misconceptions about what is required and whether this prohibition is required at all.

I have to say that for my part I do not like the clause as it currently stands. It is wrong in principle and it is dishonest of this Parliament. It is dishonest to promote a bill that is supposed to encourage a dignified death but then say that if someone does this, they might be stigmatised for it, so the government will be twee about it and remove some of the information from the public record to disguise what has happened. That is not the case in other circumstances that might be equally, if not more, sensitive, or might be equally, if not more, damaging to a person's reputation and to the sensitivities of their families. Whether we replace it or not, I do not care, but I do not like it the way that it is. I am not formulating an amendment at this point, but there may be some other reference that can be made rather than simply "voluntary assisted dying". Maybe a reference to the substance that has been administered can be made and just leave it at that—"Cancer and" whatever the substance happens to be, which would satisfy a variety of needs. But I leave that for the future. At this stage, I agree with the deletion of the words.

Hon Peter Collier; Hon Stephen Dawson; Hon Rick Mazza; Hon Tjorn Sibma; Hon Dr Steve Thomas; Hon Aaron Stonehouse; Hon Alison Xamon; Hon Jacqui Boydell; Hon Colin Tincknell; Hon Nick Goiran; Hon Sue Ellery; Hon Diane Evers; Hon Kyle McGinn; Hon Simon O'Brien; Hon Martin Aldridge; Hon Alannah MacTiernan; Hon Michael Mischin; Hon James Chown; Hon Colin Holt; Hon Donna Faragher; Hon Robin Chapple; Hon Martin Pritchard; Hon Adele Farina

Hon STEPHEN DAWSON: I know that other people want to make contributions, but some questions have been asked and I want to try to deal with them as we progress. I thank the Minister for Regional Development for her contribution. I want to reiterate one thing she said, and that was that a refusal to accept some forms of treatment for a terminal illness—for example, cancer—may result in an accelerated death, but the cause of death is recorded as the terminal illness. A point was made before we broke for dinner about the ministerial expert panel, and I want to put on the record that no members of the ministerial expert panel dissented from recommendation 5, which deals with this issue. Even though there was considerable discussion, in the end there was consensus.

Hon Martin Aldridge asked a question about insurance. This issue was canvassed at clause 1 and briefly at clause 11, but it is important that I provide an answer again. Insurance and superannuation are private contractual arrangements. Leaving a voluntary assisted dying bill silent on life insurance provides agency to all insurers and the public. People can usually access entitlements when terminally ill and expected to die within a certain time frame. Upon diagnosis, the individual would either already have life insurance or not, and they may be unable to take out life insurance after being diagnosed. Many life insurance policies include terminal illness cover, so a person who is diagnosed with a terminal illness and is not expected to live more than 12 months will be entitled to receive their benefits in full prior to their death. Many Australian life insurance policies cover suicide, but only after a specified exclusion period, and I am advised it is usually 13 months. Insurance was not a consideration factor for the clause 81 exclusion. I am told that the clause 81 exclusion was based on the ministerial expert panel's recommendations.

Hon Michael Mischin asked a question about the current process for death certificate documents. When a person dies, their death is certified by a medical practitioner. This medical practitioner, who is responsible for the patient's medical care immediately before death or who examined the deceased's body, is required to complete a form known as the "Medical Certificate of Cause of Death". This is pursuant to section 44 of Western Australia's Births, Deaths and Marriages Registration Act 1998. This form requires the medical practitioner to define the disease or condition that directly led to the death and other causes or conditions that contributed to the death. These details inform what is on the public death certificate and also data collected at state and national levels. The "Medical Certificate of Cause of Death" is forwarded by the doctor to the funeral director who, in turn, provides it to the Registrar of Births, Deaths and Marriages. The funeral director then completes the manual death registration form and sends it to the Registrar of Births, Deaths and Marriages, along with the "Medical Certificate of Cause of Death". Following the receipt of those two forms, the Registrar of Births, Deaths and Marriages issues a death certificate to the funeral director or family of the person who has died.

Hon ALISON XAMON: I want some clarification about some issues that have been raised, and particularly pick up on a point made by Hon Alannah MacTiernan. The first thing I want to say is that I do not like clause 81(6) as it is currently written. I think that needs to come out of the bill in its entirety. Picking up on Hon Michael Mischin's comments, I believe that the current process used by the coroner in determining the most appropriate information to go on death certificates should be the same for people who avail themselves of voluntary assisted dying as it is for any other form of death. It leads me to a question about the amendment that is also in front of us at the moment. I see that this potentially can be dealt with in two parts. One is that an amendment could be moved to simply take subclause (6) in its entirety out of the bill. To be perfectly honest, I would be satisfied with that as well. The second question is whether we include the words as put forward by Hon Colin Tincknell; that is —

The medical practitioner must state that voluntary assisted dying was the cause of death.

Hon Alannah MacTiernan put forward to this chamber her understanding that if this subclause were to get up, a death certificate would say "Cause of death—voluntary assisted dying" as opposed to what I want to see, which is "Cause of death—cancer", with the necessary codicil underneath. That would be further information on the record that voluntary assisted dying was also utilised, in the same way that is done with drug overdose, suicide, murder and a whole range of other forms of death when a further explanation about the circumstances of death is required.

I have an important question to ask the minister. It is not about the substance of whether clause 81(6) should be defended and should stay; I am very clear that I think it should go. Does the minister interpret Hon Colin Tincknell's proposed amendment would have the effect of describing the cause of death as solely being voluntary assisted dying? If that were the case, I would not be supportive of it. Part of the reason we also need to have the physiological descriptor of death, apart from having an accurate record, is so that people can do things like track their family history. These are good reasons to have these things on the record. Can I please ask the minister whether that is how it is being interpreted, as has been suggested by Hon Alannah MacTiernan?

Hon STEPHEN DAWSON: Our reading of it is yes.

Hon Peter Collier; Hon Stephen Dawson; Hon Rick Mazza; Hon Tjorn Sibma; Hon Dr Steve Thomas; Hon Aaron Stonehouse; Hon Alison Xamon; Hon Jacqui Boydell; Hon Colin Tincknell; Hon Nick Goiran; Hon Sue Ellery; Hon Diane Evers; Hon Kyle McGinn; Hon Simon O'Brien; Hon Martin Aldridge; Hon Alannah MacTiernan; Hon Michael Mischin; Hon James Chown; Hon Colin Holt; Hon Donna Faragher; Hon Robin Chapple; Hon Martin Pritchard; Hon Adele Farina

Hon ALISON XAMON: In that case, I would like to move an amendment—I am not sure how this will be treated by the chamber; I seek your guidance, Mr Deputy Chair—or maybe foreshadow an amendment, that lines 6 to 8 on page 55 be removed.

The DEPUTY CHAIR: Let me check this: are you proposing that no words would be inserted?

Hon Alison Xamon: That is correct.

The DEPUTY CHAIR: The motion currently before the chamber is that the words to be deleted be deleted. If members simply voted against the words to be inserted being inserted, which would be the following question, that would achieve that outcome. The member does not need to move an amendment. If her intent were simply to remove clause 81(6) and not replace it with anything, she would vote aye for the first question and no for the second question. Does everybody understand that?

Hon JIM CHOWN: Initially, I was going to support Hon Colin Tincknell's amendment but Hon Alison Xamon makes a very good point. As a supporter of this bill, I am a little concerned that we are delving into the depths of hypocrisy in regard to some of the statements being made by members. Obviously, there is no stigma with VAD; otherwise, 80 per cent of people in this state would not be supporting it. If I were in the situation of accessing VAD, I would get all my friends and family around and make it very public. I would get their support about my intentions in regard to taking my own life to alleviate suffering. They would all support me. I believe that privacy is not an issue that we should be concerned about in regard to having VAD or something along the lines that Hon Alison Xamon suggested be on the death certificate.

I have a copy of a death certificate in front of me. One of the questions asked is "Manner of death". Obviously, the square boxes need to be ticked. One of them is "Intentional self-harm". I do not know where VAD would fit in that particular part of a death certificate. We may start to get concerned about public notifications. It has already been mentioned by Hon Michael Mischin and researched quite extensively by Hon Donna Faragher; I thank her very much for her work over a brief discussion at teatime. Western Australia has the Cremation Act 1929 and the Cremation Regulations 1954. I am not sure whether the form 7 for cremation is a public document, but it is certainly a document. On page 2, it asks very specific questions under the Cremation Act. One of them is "Direct cause of death". That must be filled out prior to a body being cremated. In this state, 80 per cent of people who die are cremated. This is a document that states the cause of death. I would assume the direct cause of death on this document would be voluntary assisted dying. If it did not say anything else, it would be an untruth. Alongside "Clinical observations", it states —

Do you know, or have reason to suspect, that the deceased's death was directly or indirectly due to any of the following? (*tick or circle if yes*)

violence	poison
privation or neglect	medical procedure
drowning	suffocation
burns	

The substance we are talking about is already stated in the act; it is a schedule 4 or schedule 8 poison. It has to be stated what it is on this document. That makes an absolute joke of the death certificate not including this as the cause of death. I would like the minister to answer a couple of questions about this matter. I would certainly support an amendment along the lines proposed by Hon Alison Xamon or one to provide some clear statement on the death certificate about what the person died from; otherwise, it will come out on form 7 under the Cremation Regulations 1954. The death certificate or the cremation form will be dishonest.

Hon COLIN HOLT: Perhaps the mover of the amendment can confirm this: if the chamber supports the amendment, "voluntary assisted dying" will be recorded on the death certificate as the cause of death—is that right?

Hon Colin Tincknell: That is my amendment.

Hon COLIN HOLT: I pick up the point made by Hon Michael Mischin, who said that relevant information would not be recorded on the death certificate. I think the underlying cause of the illness, which is the motivating factor behind voluntary assisted dying, is important information. If we support the amendment moved by Hon Colin Tincknell, that information will not be recorded on the death certificate.

Hon Nick Goiran: That is not true. Ask the minister.

Hon COLIN HOLT: I think that is the interpretation he gave us earlier. Maybe the minister can clear it up. I think that is important information because we want to know the underlying cause of death. People undertake this process because they are dying from some underlying illness. That should absolutely be recorded on the death certificate.

Hon Peter Collier; Hon Stephen Dawson; Hon Rick Mazza; Hon Tjorn Sibma; Hon Dr Steve Thomas; Hon Aaron Stonehouse; Hon Alison Xamon; Hon Jacqui Boydell; Hon Colin Tincknell; Hon Nick Goiran; Hon Sue Ellery; Hon Diane Evers; Hon Kyle McGinn; Hon Simon O'Brien; Hon Martin Aldridge; Hon Alannah MacTiernan; Hon Michael Mischin; Hon James Chown; Hon Colin Holt; Hon Donna Faragher; Hon Robin Chapple; Hon Martin Pritchard; Hon Adele Farina

Hon Michael Mischin: I don't have a problem with that.

Hon COLIN HOLT: I know, but if we pass this amendment, the cause of death is voluntary assisted dying.

Hon Alison Xamon: That is what the minister said.

Hon COLIN HOLT: Yes, that is what the minister said.

Hon DONNA FARAGHER: I have a query. Hon Jim Chown raised an issue. My query relates to the Cremation Act 1929. The minister might be able to assist us. Obviously, the subclause we are referring to at the moment relates to the cause of death certificate under the Births, Deaths and Marriages Registration Act 1998. I understand that a permit is required and an application must be made for any cremation. That is undertaken through the regulations and by filling out a form. Hon Jim Chown mentioned this. The minister may be able to clarify this for me. Under "Cause of death", that form states, in part —

*Direct cause of death:

*Antecedent causes of death (if any):

*Conditions contributing to or accelerating death (if any):

I have not seen this in this part of the legislation. I ask the minister: is it intended that the Cremation Act and the relevant regulations and forms will have to be amended if this clause is passed? The way I read it, the certificate of cremation of the medical practitioner would, under the current provisions, have to indicate the acceleration of death. I would appreciate getting some clarification on that.

The DEPUTY CHAIR: I remind members that it is unparliamentary to pass between the Chair and a member on their feet. We have had a couple of examples on both sides of the house this afternoon and this evening. This is a gentle reminder to ensure that you are not passing between the speaker and the Chair.

Hon STEPHEN DAWSON: I am advised that the Cremation Act requirements for certification comes from the cause of death on the medical certificate. Therefore, if the cause of death is not on the medical certificate, it will not be listed as a cause or antecedent. Let me say that again.

Hon DONNA FARAGHER: I am happy to give the minister a copy of the form that I have located—form 7, under the Cremation Act 1929.

Hon Stephen Dawson: Not the medical certificate cause of death?

Hon DONNA FARAGHER: No. This is why I am seeking some clarification. If this provision is to remain, does the government intend to make any relevant changes to the Cremation Act 1929 or the regulations that would form part of the matter we are dealing with?

Hon STEPHEN DAWSON: I am advised that the form does not need to be changed because it states —

(* If a Medical Certificate of Cause of Death is attached, answers are not required to these questions.)

Hon DONNA FARAGHER: The minister is correct; it says yes and then it asks for the name of the doctor who signs the certificate, and then there are these points, including direct cause of death. It is quite clear. I appreciate that there is a little note next to it, which states —

(* If a Medical Certificate of Cause of Death is attached, answers are not required to these questions.)

The point is that they are still on this form. I appreciate that in certain circumstances, the cause of death may not be required. In what cases will it not be required? If that is the case, what is the point of even having it on this form? That is what I want clarified. If the issue is with the certificate, I accept that but why is it still on this form?

Hon STEPHEN DAWSON: This is a form under the Cremation Act 1929. It is not a medical certificate of cause of death. My advice is that the bill before us does not change that form and there is no requirement to change the wording on the form.

Hon DONNA FARAGHER: I apologise. I am not an expert on the Cremation Act.

Hon Stephen Dawson: You and me both, honourable member.

Hon DONNA FARAGHER: We are learning quickly. I understand that in order to apply for a permit to cremate, one of the forms that must be filled out is the one that we are referring to. It must be filled out by a medical practitioner in addition to the certificate that we referred to already. There are requirements, as I understand it, and I am happy to be proven wrong. The way I read it, given my very short reading of it this afternoon, it is required to be filled out.

Hon Peter Collier; Hon Stephen Dawson; Hon Rick Mazza; Hon Tjorn Sibma; Hon Dr Steve Thomas; Hon Aaron Stonehouse; Hon Alison Xamon; Hon Jacqui Boydell; Hon Colin Tincknell; Hon Nick Goiran; Hon Sue Ellery; Hon Diane Evers; Hon Kyle McGinn; Hon Simon O'Brien; Hon Martin Aldridge; Hon Alannah MacTiernan; Hon Michael Mischin; Hon James Chown; Hon Colin Holt; Hon Donna Faragher; Hon Robin Chapple; Hon Martin Pritchard; Hon Adele Farina

Hon STEPHEN DAWSON: I am advised that the form needs to be filled out when accessing cremation, but in relation to the cause of death, again the section that refers to the direct cause of death, antecedent causes of death, if any, and conditions contributing to or accelerating death, if any, will not need to be filled out if the medical certificate of cause of death is attached. That is the intention.

Hon DONNA FARAGHER: What happens if the medical certificate is not attached?

Hon STEPHEN DAWSON: I am told that it has to be for a VAD situation.

Hon ROBIN CHAPPLE: Those members who served on the Joint Select Committee on End of Life Choices with me will remember that I had a passionate intensity for the issue of “do not resuscitate”. That is put into advance health directives. It appears on the end of the bed of the patient. The patient is making a decision with or without the family, just with the doctor, and nothing is recorded with the coroner that the person who has passed away has made a deliberate decision to end their lives if they suffer a stroke, a heart attack or whatever else. I am very interested in why we are going down this path when there are elements of advance healthcare directives that allow people to say, “I want to die if I have this situation”, but it will not be recorded. Those people who served on the committee will know that that is my perennial issue; I think Hon Colin Holt and Hon Nick Goiran will be thinking, “Oh, no, he’s mentioning DNR again.” It is a deliberative decision of the patient to end their life under certain circumstances, and it is not recorded anywhere.

Hon NICK GOIRAN: I fear that the simple is being made complex. I have in front of me a copy of a “Medical Certificate of Cause of Death”, to which the minister has referred several times this evening. Under the heading “Cause of death details” are three boxes. The first two boxes under part I say —

(a) Disease or condition directly leading to death (disease, injury or complication that caused death NOT only the mode of dying e.g. heart failure, respiratory failure)

(b) to (e) Antecedent causes (morbid conditions, if any, giving rise to the abovementioned cause, stating the underlying condition last)

Then at part II, it says —

Other significant conditions contributing to death but not related to the disease or condition causing it

I urge members to fully appreciate that the amendment moved by Hon Colin Tincknell, whether they agree or disagree with it, will require a medical practitioner to state “voluntary assisted dying” somewhere in these boxes, particularly under part I. It will not, despite any assertion by anybody to the contrary, then state that a medical practitioner can do nothing more with the form. That is false. The medical practitioner will have to write “voluntary assisted dying” and then continue to fill out the form, including listing any other antecedent causes and morbid conditions, if any, giving rise to the abovementioned cause, stating the underlying condition last. That is on the form at the moment. If a person’s underlying condition is, for example, cancer, it will be listed last. That will be the case irrespective of whether members agree or disagree with Hon Colin Tincknell. He is not doing anything whatsoever with regard to that. I seek the minister’s confirmation that the information I have just given to members is correct.

Hon Dr STEVE THOMAS: I appreciate the words of Hon Alison Xamon. I think she has delivered a lot of commonsense into the debate today. On the comments of Hon Robin Chapple, there is an enormous difference between “do not resuscitate” and taking an active role to end somebody’s life, so to link the two and say that they are the same thing takes us back into this strange realm that we entered a little earlier today. “Do not resuscitate” means that the disease with which the person has been afflicted is likely to take their life and doctors will not spend an inordinate amount of time trying to reverse it. That is not the same as giving the person a bolus dose of barbiturates to end their life, and we should not consider them anything alike.

Hon MARTIN PRITCHARD: I was going to ask how we will deal with this particular provision. I have always been concerned with subclause (6). The previous Deputy Chair gave me an option to deal with it in a way that I think is appropriate. I certainly support the first part of the member’s amendment to delete the words, but, unfortunately, I will not support the second part to substitute words.

Hon COLIN TINCKNELL: I have a question for the minister. I just want to make sure that I heard him correctly. Is the minister prepared to agree to the amendment that Hon Alison Xamon mentioned?

The DEPUTY CHAIR (Hon Robin Chapple): Member, no amendment has been moved. Currently, we are dealing with the words to be deleted.

Hon COLIN TINCKNELL: I am asking whether the minister could please repeat his answer to Hon Alison Xamon’s question, because I missed it; I did not hear it.

Hon Peter Collier; Hon Stephen Dawson; Hon Rick Mazza; Hon Tjorn Sibma; Hon Dr Steve Thomas; Hon Aaron Stonehouse; Hon Alison Xamon; Hon Jacqui Boydell; Hon Colin Tincknell; Hon Nick Goiran; Hon Sue Ellery; Hon Diane Evers; Hon Kyle McGinn; Hon Simon O'Brien; Hon Martin Aldridge; Hon Alannah MacTiernan; Hon Michael Mischin; Hon James Chown; Hon Colin Holt; Hon Donna Faragher; Hon Robin Chapple; Hon Martin Pritchard; Hon Adele Farina

Hon STEPHEN DAWSON: I indicate first of all that the suggestion by Hon Alison Xamon is already on the supplementary notice paper under the name of Hon Nick Goiran. Hon Alison Xamon will not get the opportunity to move it, given that it is already on the supplementary notice paper under the name of Hon Nick Goiran. We are not supportive of the amendment standing in the name of Hon Nick Goiran, nor are we supportive of the amendment that stands in the name of Hon Colin Tincknell on this issue. In answer to Hon Nick Goiran's last question, we do not believe that "voluntary assisted dying" should be listed anywhere on the medical certificate as the cause of death for privacy reasons.

Hon Jim Chown: Who is "we"?

Hon STEPHEN DAWSON: The government does not believe it should be listed.

Hon Jim Chown: I thought it was a conscience vote.

Hon STEPHEN DAWSON: I am not sure where the honourable member has been for the last goodness knows how many hundreds of hours, but my job in this place as we have progressed has been to give the government's view on the amendments.

Hon Jim Chown: It sounds like you're talking about the whole chamber.

Hon STEPHEN DAWSON: Honourable member, for goodness sake! What I have been advising the chamber as we progress —

Several members interjected.

The DEPUTY CHAIR: Honourable members!

Hon STEPHEN DAWSON: Let me just remind honourable members in this place that my job has been to give the government's view on the various amendments before us. That has been my job the whole time and it will continue to be my job for the foreseeable future.

Hon Jim Chown: I understand that, but you used the word "we".

Hon STEPHEN DAWSON: I just remind the member that when I say "we" in that —

Several members interjected.

The DEPUTY CHAIR: Members!

Hon STEPHEN DAWSON: We—the government—do not support Hon Colin Tincknell's amendment or, indeed, Hon Nick Goiran's amendment.

Hon MARTIN PRITCHARD: The minister indicated that we may have an opportunity to vote on amendment 333/81. I do not think that is the case. If this amendment is defeated, will we get an opportunity to vote on Hon Nick Goiran's amendment?

The DEPUTY CHAIR: Member, you would not, because it would fall away. It is the same question.

Hon MARTIN PRITCHARD: Can I ask for clarification? At the moment, we are dealing with the amendment moved by Hon Colin Tincknell. I understand that we can vote in favour of the deletion of the lines and then oppose the proposed substitution. I understand that the outcome of that will be the same as the outcome of amendment 333/81. If both amendments were defeated, would we have an opportunity to vote on that one?

The DEPUTY CHAIR: No, we would not.

Hon MARTIN PRITCHARD: So the only option for me to get the outcome that has been suggested is to vote in favour of the words to be deleted and then oppose the substitution, which is what I indicated before.

The DEPUTY CHAIR: Yes, that is correct.

Hon ALISON XAMON: I just want to make sure that we are really clear, because I feel that we are getting to the point of wrapping up this debate. If members think that "voluntary assisted dying" should never, ever be mentioned on any death certificate and should never become part of the record, they should not support deleting the words and including the provision moved by Hon Colin Tincknell. If members believe that the status quo should be maintained—that is, that the coroner or medical practitioner should have the discretion to deal with the various components on the death certificate—they should vote to delete the lines, and that would effectively take out subclause (6). If members also believe that it is important that voluntary assisted dying be proactively put on the death certificate as a requirement, they should support the inclusion of the words put forward by Hon Colin Tincknell. They are the three choices.

Hon Peter Collier; Hon Stephen Dawson; Hon Rick Mazza; Hon Tjorn Sibma; Hon Dr Steve Thomas; Hon Aaron Stonehouse; Hon Alison Xamon; Hon Jacqui Boydell; Hon Colin Tincknell; Hon Nick Goiran; Hon Sue Ellery; Hon Diane Evers; Hon Kyle McGinn; Hon Simon O'Brien; Hon Martin Aldridge; Hon Alannah MacTiernan; Hon Michael Mischin; Hon James Chown; Hon Colin Holt; Hon Donna Faragher; Hon Robin Chapple; Hon Martin Pritchard; Hon Adele Farina

The only concern that I again flag is that I have heard two conflicting views about the provision put forward by Hon Colin Tincknell, one of which is that it will be part of the record. That was certainly the position put forward by Hon Nick Goiran and it was the position that I always understood. The other view is the position put forward by the minister that the wording as articulated by Hon Colin Tincknell would effectively preclude the capacity to have all the other circumstances around somebody's death incorporated into a death certificate, and the cause of death would simply be voluntary assisted dying, which I obviously would not support. I think this is the last piece of the puzzle that we need clarified in this chamber: whether the words to be inserted by Hon Colin Tincknell's amendment would have the effect of limiting further the provisions available on a death certificate, which would run counter to my concerns, because that is precisely my concern with subclause (6) as it currently stands.

Hon NICK GOIRAN: I ask the minister to clarify that. As the honourable member said, I put forward a position and I want confirmation. The government does not need to tell me that it does not want voluntary assisted dying put on the death certificate. I already understand that. That is not the question. The question is: if we support the insertion of the words as put by Hon Colin Tincknell, would it be the case that (a) they are the only words that can appear on the death certificate or (b) they are some of the words that will appear on the death certificate but a medical practitioner can add whatever other words they wish?

Hon Stephen Dawson: Can Hon Nick Goiran ask his question again?

Hon NICK GOIRAN: If the words to be inserted by Hon Colin Tincknell's amendment are supported, will it (a) result in "voluntary assisted dying" being the only words that can be inserted as cause of death or (b) require those words to be put on the death certificate but not limit the medical practitioner in listing as many other things under "cause" as they wish to?

Hon STEPHEN DAWSON: The answer is (b).

Hon ADELE FARINA: I will be very brief because my position on this issue is already on the public record. I covered it in my contribution to the second reading debate. I do not agree with subclause (6). I support the amendment moved by Hon Colin Tincknell. I think it is really important from a statistical and accuracy point of view that official documents are properly completed, and we should leave that to the medical practitioners who have been doing it for decades—centuries. They know what they are doing. This amendment simply requires that voluntary assisted dying is included in the description of the cause of death. It does not eliminate anything being mentioned. I support the amendment.

Division

Amendment put and a division taken, the Deputy Chair (Hon Robin Chapple) casting his vote with the noes, with the following result —

Ayes (17)

Hon Martin Aldridge	Hon Nick Goiran	Hon Tjorn Sibma	Hon Alison Xamon
Hon Jim Chown	Hon Rick Mazza	Hon Charles Smith	Hon Ken Baston (<i>Teller</i>)
Hon Peter Collier	Hon Michael Mischin	Hon Aaron Stonehouse	
Hon Donna Faragher	Hon Simon O'Brien	Hon Dr Steve Thomas	
Hon Adele Farina	Hon Martin Pritchard	Hon Colin Tincknell	

Noes (18)

Hon Jacqui Boydell	Hon Colin de Grussa	Hon Alannah MacTiernan	Hon Dr Sally Talbot
Hon Robin Chapple	Hon Sue Ellery	Hon Kyle McGinn	Hon Darren West
Hon Tim Clifford	Hon Diane Evers	Hon Samantha Rowe	Hon Pierre Yang (<i>Teller</i>)
Hon Alanna Clohesy	Hon Laurie Graham	Hon Robin Scott	
Hon Stephen Dawson	Hon Colin Holt	Hon Matthew Swinbourn	

Amendment thus negatived.

Hon NICK GOIRAN: What would be the effect of opposing clause 81?

Hon STEPHEN DAWSON: If this clause were defeated, we would not have the data that we seek to collect as a result of this clause. By including this clause, the board will be able to maintain complete and accurate statistics on participation in voluntary assisted dying in Western Australia. This information will be provided to the Australian Bureau of Statistics and available in a de-identified form to the Parliament and the community so that they can form a view on how well the legislation is operating. That is one thing we would not have if it were deleted.

Hon Peter Collier; Hon Stephen Dawson; Hon Rick Mazza; Hon Tjorn Sibma; Hon Dr Steve Thomas; Hon Aaron Stonehouse; Hon Alison Xamon; Hon Jacqui Boydell; Hon Colin Tincknell; Hon Nick Goiran; Hon Sue Ellery; Hon Diane Evers; Hon Kyle McGinn; Hon Simon O'Brien; Hon Martin Aldridge; Hon Alannah MacTiernan; Hon Michael Mischin; Hon James Chown; Hon Colin Holt; Hon Donna Faragher; Hon Robin Chapple; Hon Martin Pritchard; Hon Adele Farina

Hon NICK GOIRAN: As a result of clause 81, the Voluntary Assisted Dying Board will be told that a person has died as a result of ingesting or being provided with a voluntary assisted dying substance. That will be part of the statistics that are kept and made available, to which the public will have access, maybe in a redacted form. The clause also provides that voluntary assisted dying will not appear on the death certificate. Is that the sum total of clause 81?

Hon STEPHEN DAWSON: Yes, you are correct, honourable member.

Hon MICHAEL MISCHIN: Clause 81 is focused entirely on what information is to be provided to the board, but, unless I am wrong, it does not negate the obligation of any relevant person, such as a medical practitioner, to comply with the requirements of the Coroners Act and notify the coroner of relevant material regarding the death. Would that be correct?

Hon STEPHEN DAWSON: It does not negate the obligation when the practitioner forms the view that it is not a death in accordance with the voluntary assisted dying legislation. Clause 166 is a consequential amendment to the Coroners Act that provides that a voluntary assisted dying death is not an automatically reportable death, other than for a person held in care. In relation to reporting to the coroner, if the certifying medical practitioner is of the opinion or suspects that the patient's death has not occurred in accordance with the bill, they do not have to fill out the death certificate, but must refer the matter to the coroner. This is because, in these circumstances, only a death that has occurred in accordance with the VAD legislation will not be a reportable death.

Hon MICHAEL MISCHIN: To take that a little further, if clause 81 were to be deleted from the bill, there would still be a requirement, pursuant to the Coroners Act, to report the death to the coroner unless it falls within the provisions of the intended amendment to the Coroners Act prescribing that VAD deaths are not reportable, and there would still be an obligation under section 44 of the Births, Deaths and Marriages Registration Act 1998 to report the death to the registrar. Would that be right?

Hon STEPHEN DAWSON: The honourable member is correct on both fronts.

Hon MICHAEL MISCHIN: So the only purpose of clause 81 is to legislatively require whoever is completing the certificate to not reveal the truth about the circumstances of the death in all the detail that they might think relevant, and to prescribe for a certain reporting condition to the board. Those are the only things that it does. Would that be right?

Hon STEPHEN DAWSON: Honourable member, I disagree with your premise that it is about not revealing the truth. We have had a debate on that.

Hon Michael Mischin: All the relevant facts.

Hon STEPHEN DAWSON: We have had a debate. In relation to the facts, Hon Michael Mischin could be correct. In fact, I am told that he is incorrect, because I am told that a voluntary assisted dying death will be a lawful death.

Hon MICHAEL MISCHIN: Whether or not it is lawful is not the point, minister. It is a relevant fact. Anyway, that has been dealt with. However, those are the only two consequences of clause 81, so if it happened to be deleted, there would still be an ability on the part of the board to get the relevant information by some other means. It could do that with reference to death certificates and by accessing any records of the coroner from time to time. Would that be correct?

Hon STEPHEN DAWSON: It is possible that there are other ways of getting the information to the board. For the information of the chamber, it is the government's view that clause 81 as it stands should be included in the bill, and I hope honourable members will vote to include it.

Hon DONNA FARAGHER: I have one very quick question. I apologise if this question was asked while I was out of the chamber on urgent parliamentary business. I refer to subclause (6) and not including any reference to voluntary assisted dying in the death certificate. Is a penalty attached if they do choose to include that or is it simply the fact that a family member or other caregiver could make a complaint to the relevant medical board or complaints office? I am just wanting some clarification of how the process will go if they do that, because that is not clear from the bill.

Hon STEPHEN DAWSON: I am advised that under clause 10 it would be a contravention of the legislation by the registered health practitioner. There is no penalty attached under the legislation, but it could be unprofessional conduct. There are offence provisions in the legislation prohibiting people leaking personal information about voluntary assisted dying. As such, a doctor or funeral director who informs family or community members that someone has died due to voluntary assisted dying is in breach of the legislation under clause 105.

Division

Extract from *Hansard*
[COUNCIL — Tuesday, 3 December 2019]
p9728a-9752a

Hon Peter Collier; Hon Stephen Dawson; Hon Rick Mazza; Hon Tjorn Sibma; Hon Dr Steve Thomas; Hon Aaron Stonehouse; Hon Alison Xamon; Hon Jacqui Boydell; Hon Colin Tincknell; Hon Nick Goiran; Hon Sue Ellery; Hon Diane Evers; Hon Kyle McGinn; Hon Simon O'Brien; Hon Martin Aldridge; Hon Alannah MacTiernan; Hon Michael Mischin; Hon James Chown; Hon Colin Holt; Hon Donna Faragher; Hon Robin Chapple; Hon Martin Pritchard; Hon Adele Farina

Clause put and a division taken, the Deputy Chair (Hon Robin Chapple) casting his vote with the ayes, with the following result —

Ayes (19)

Hon Martin Aldridge	Hon Stephen Dawson	Hon Colin Holt	Hon Matthew Swinbourn
Hon Jacqui Boydell	Hon Colin de Grussa	Hon Alannah MacTiernan	Hon Dr Sally Talbot
Hon Robin Chapple	Hon Sue Ellery	Hon Kyle McGinn	Hon Darren West
Hon Tim Clifford	Hon Diane Evers	Hon Samantha Rowe	Hon Pierre Yang (<i>Teller</i>)
Hon Alanna Clohesy	Hon Laurie Graham	Hon Robin Scott	

Noes (14)

Hon Jim Chown	Hon Nick Goiran	Hon Martin Pritchard	Hon Alison Xamon
Hon Peter Collier	Hon Rick Mazza	Hon Charles Smith	Hon Ken Baston (<i>Teller</i>)
Hon Donna Faragher	Hon Michael Mischin	Hon Aaron Stonehouse	
Hon Adele Farina	Hon Simon O'Brien	Hon Colin Tincknell	

Clause thus passed.

Clause 82: Terms used —

Hon NICK GOIRAN: Clause 82(b) provides that an agent of a patient is an eligible applicant. What will be the procedure to determine whether the person making an application to the State Administrative Tribunal is, in fact, an agent of the patient? While the minister is considering that, perhaps he can also advise whether a contact person would qualify under clause 82(b).

Hon STEPHEN DAWSON: The patient would have to confirm to the State Administrative Tribunal that an agent had been appointed. With regard to whether a contact person could be appointed as an agent, the answer is that the contact person could be appointed as an agent if the person chooses them.

Hon NICK GOIRAN: When we use the term “agent” at clause 82, I take it that we are not necessarily restricting the use of that term to the use of “agent” as used elsewhere in the bill; it has a broader interpretation?

Hon STEPHEN DAWSON: We are talking about a broader use of the word “agent”, and I am told that it is a commonly used term across health to denote a person chosen by the patient to act on their behalf.

Hon NICK GOIRAN: Clause 82(c) allows someone with a special interest to be an eligible applicant. Can the minister explain who someone with a special interest might be and how this would be determined by the tribunal?

Hon STEPHEN DAWSON: A person who has a special interest in the medical treatment and care of the patient may also apply to the tribunal for a review. This highlights that only persons directly involved with a particular voluntary assisted dying case are able to seek a review of decisions via the tribunal. The requirement of “special interest” excludes people who simply oppose voluntary assisted dying; they cannot interfere with the autonomous decision of a patient to access voluntary assisted dying. A primary caregiver, such as a relative or carer, or the patient’s lawyer, may be determined by the tribunal to have a special interest. Merely being a member of the patient’s family is not alone intended to be sufficient to constitute having a special interest for the purposes of this clause. It would be up to the tribunal to make the decision about whether someone who comes before it has standing to bring a particular issue to the tribunal’s attention. A person may make an application to the tribunal; however, it is then ultimately up to the tribunal to decide whether it will hear the case that has been put before it. This will be determined on a case-by-case basis by the tribunal in its independent function as a deliberative body.

Clause put and passed.

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

Hon NICK GOIRAN: Section 18 of the Victorian Voluntary Assisted Dying Act 2017, which is equivalent to clause 83, does not allow for a review of practitioner decisions around the patient’s voluntariness, and whether the patient is acting without coercion. Why does the government deem it necessary to include in the bill clauses 83(1)(a)(iii), (b)(iii) and (c)(ii)?

Hon STEPHEN DAWSON: I am advised that upon consultation with the President of the State Administrative Tribunal, it was raised. It was confirmed that it is appropriate for SAT in its ordinary jurisdiction to consider whether a person is acting voluntarily and without coercion. This occurs routinely in the human rights stream of SAT.

Hon Peter Collier; Hon Stephen Dawson; Hon Rick Mazza; Hon Tjorn Sibma; Hon Dr Steve Thomas; Hon Aaron Stonehouse; Hon Alison Xamon; Hon Jacqui Boydell; Hon Colin Tincknell; Hon Nick Goiran; Hon Sue Ellery; Hon Diane Evers; Hon Kyle McGinn; Hon Simon O'Brien; Hon Martin Aldridge; Hon Alannah MacTiernan; Hon Michael Mischin; Hon James Chown; Hon Colin Holt; Hon Donna Faragher; Hon Robin Chapple; Hon Martin Pritchard; Hon Adele Farina

Hon NICK GOIRAN: Why is the opportunity for tribunal review otherwise limited to decisions by the coordinating or consulting practitioner about the patient's residency, decision-making capacity, and the voluntariness of the patient's request? What if an error is made by the coordinating or consulting practitioner about the patient's diagnosis or prognosis, the practitioner's assessment of which is required under clause 15(c)? How can this decision be reviewed?

Hon STEPHEN DAWSON: The matters that may be the subject of review by the tribunal are limited and do not extend to each of the eligibility criteria. Most of the criteria involve clinical decisions and are not subject to review by the tribunal. A person could seek judicial review of a decision made by a coordinating or consulting practitioner that is not reviewable by the tribunal. They may also refer a complaint to the Health and Disability Services Complaints Office and the CEO of Health, or refer concerns to the WA Police Force.

Hon NICK GOIRAN: Would that judicial review be to the Supreme Court?

Hon STEPHEN DAWSON: I am advised that, yes, it would be.

Clause put and passed.

Clause 84: Notice of decision and right to have it reviewed —

Hon NICK GOIRAN: Why does the government deem it necessary to modify the operation of section 20 of the State Administrative Tribunal Act?

Hon STEPHEN DAWSON: The decision-maker may not know who the agent is, but the patient can inform the agent. Further, the decision-maker will not know that persons are within paragraph (c) of the definition of eligible applicant, because the tribunal must determine who such a person is. I am further advised that this was raised by the President of the State Administrative Tribunal to be included in the bill.

Hon NICK GOIRAN: How will an eligible applicant who is not the patient be made aware of a tribunal decision referred to in clause 83(1)?

Hon STEPHEN DAWSON: I am advised that it is only if they become an applicant that they will receive advice about the notice of the decision.

Hon NICK GOIRAN: Does an eligible applicant who is not the patient, for example an agent or someone with a special interest, have a right to have a tribunal decision under clause 83(1) reviewed; and, if so, how will they be made aware of this right of review?

Hon STEPHEN DAWSON: Can the honourable member ask his question in a different way, please, to clarify exactly what he is asking for, so we can be clear about what answer he is looking for?

Hon NICK GOIRAN: Clause 84 refers to —

... person who has to be given notice under that section in relation to a decision referred to in section 83(1) ...

I am asking: of the various people who can be given notice, is one of those people an applicant? Earlier, particularly under clause 82, we established that an applicant might not be a patient. If the applicant is not a patient, for example an agent or someone with a special interest, do they have a right to have a tribunal decision under that clause reviewed? If they do, how will they be made aware of this right of review?

Hon STEPHEN DAWSON: I am advised that the CEO of Health will make general information available, but a person seeking a review would seek legal advice. A person must be a party to proceedings to be given notice of the decision and information by SAT about appeal rights. I am further advised that there is no right of further review. There is a right of appeal, but that is only available to a party to proceedings in SAT.

Hon ADELE FARINA: Can I just check, is there some tension between clause 84 and clause 93(1), which states that any decision or order of the tribunal on an application in relation to a patient needs to be provided to the coordinating practitioner, the consulting practitioner, the administering practitioner, the CEO and the board?

Hon STEPHEN DAWSON: I am advised there is no tension. Clause 84 relates to the decision-maker and clause 93 relates to the tribunal.

Clause put and passed.

Clause 85: Consequences of review application —

Hon NICK GOIRAN: Clause 85(1) provides —

Hon Peter Collier; Hon Stephen Dawson; Hon Rick Mazza; Hon Tjorn Sibma; Hon Dr Steve Thomas; Hon Aaron Stonehouse; Hon Alison Xamon; Hon Jacqui Boydell; Hon Colin Tincknell; Hon Nick Goiran; Hon Sue Ellery; Hon Diane Evers; Hon Kyle McGinn; Hon Simon O'Brien; Hon Martin Aldridge; Hon Alannah MacTiernan; Hon Michael Mischin; Hon James Chown; Hon Colin Holt; Hon Donna Faragher; Hon Robin Chapple; Hon Martin Pritchard; Hon Adele Farina

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

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

Hon STEPHEN DAWSON: I am told no-one. Others can be parties to a review application, but the subject of a review application is always the patient.

Hon NICK GOIRAN: Clause 85 assumes that the review application will be made either before the request and assessment process has been completed—that can be seen at clause 85(2)—or, indeed, after the request and assessment process is completed but before the prescription, supply or administration of a voluntary assisted dying substance. If the step of prescription, supply or administration has already been taken, is there any avenue for tribunal review?

Hon STEPHEN DAWSON: I am constantly amazed that even with the four of us sitting at this table, when the honourable member asks a question, we hear different things. I hope we have an answer to what the honourable member asked. Clause 85(3) contemplates stopping the process even after the substance has been supplied but before it has been administered. The State Administrative Tribunal could make an interim injunction.

Hon NICK GOIRAN: The explanatory memorandum states —

This clause modifies the operation of section 25 of the *State Administrative Tribunal Act 2004* ...

What is provided for in that section and why does the government deem the modification of that act necessary?

Hon STEPHEN DAWSON: Section 25 of the SAT act has a general provision for all SAT proceedings on review. Clause 85 has specific provisions for VAD tailored to the processes under the VAD bill. In particular, there is an automatic stay under clause 85, whereas under section 25(2) of the SAT act, the tribunal may make an order staying the operation of a decision.

Clause put and passed.

Clause 86: Review application taken to be withdrawn if patient dies —

Hon NICK GOIRAN: Even if the patient has died, is it not in the interests of justice and community safety that a review decision be made by the tribunal if it is alleged that a coordinating and/or consulting practitioner has made an error in the request and assessment process?

Hon STEPHEN DAWSON: Once the patient dies, the tribunal's role stops. There would be no need to seek a change of the review decision because it would have no effect, given that the patient is dead. There would be no dispute to review. Courts and tribunals do not rule on hypotheticals. Regarding the role of the tribunal and the review process concerning whether a patient can continue to pursue or proceed with the voluntary assisted dying process, if the patient passes away, they obviously cannot proceed with the voluntary assisted dying process so the tribunal would have no decision to make. The tribunal's decision ultimately would not be required because it would have no effect. It would not, for example, be able to say, "Yes, this patient should have access to voluntary assisted dying because the patient will have already passed away" and vice versa. From that perspective, the action will lapse because the tribunal could no longer make a decision on that patient continuing with the process.

Hon NICK GOIRAN: If there is a dispute over a contentious issue and maybe a matter of interpretation, would it not assist the facilitation of the process moving forward if a tribunal actually made a decision, irrespective of whether the patient has died, so that other medical practitioners, the CEO, the board and everybody else could understand how the tribunal would interpret these matters from time to time?

Hon STEPHEN DAWSON: I am advised that the decision is of no force and has no effect on the patient because the patient is dead. The tribunal may have other opportunities to make decisions to assist practitioners under the act. There are other opportunities. If there are concerns about the process, people can report their concerns to the CEO of Health, for example, or to the WA Police Force. The Voluntary Assisted Dying Board and tribunal could report to the appropriate authority if they suspected any criminal behaviour. The CEO of Health, the Health and Disability Services Complaints Office, the Western Australian Police Force and the Australian Health Practitioner Regulation Agency all hold a range of powers of investigation into these things.

Hon NICK GOIRAN: Is there any other avenue of review for an eligible applicant to follow if that applicant believes an error has been made by the coordinating or consulting practitioner in the request and assessment process, regardless of whether the patient has died?

Hon STEPHEN DAWSON: If they have a complaint, they could take it to the CEO. Does that give the member the answer?

Hon Peter Collier; Hon Stephen Dawson; Hon Rick Mazza; Hon Tjorn Sibma; Hon Dr Steve Thomas; Hon Aaron Stonehouse; Hon Alison Xamon; Hon Jacqui Boydell; Hon Colin Tincknell; Hon Nick Goiran; Hon Sue Ellery; Hon Diane Evers; Hon Kyle McGinn; Hon Simon O'Brien; Hon Martin Aldridge; Hon Alannah MacTiernan; Hon Michael Mischin; Hon James Chown; Hon Colin Holt; Hon Donna Faragher; Hon Robin Chapple; Hon Martin Pritchard; Hon Adele Farina

Hon Nick Goiran: It is more about if somebody is concerned about an error that has been made rather than a complaint, so they want it to be reviewed. Is the only avenue the tribunal and the Supreme Court? Is there any other place they can go for review?

Hon STEPHEN DAWSON: I think the CEO of Health is another option.

Clause put and passed.

Clause 87: Decision of Tribunal —

Hon NICK GOIRAN: How will the tribunal decide whether a patient has decision-making capacity in relation to voluntary assisted dying?

Hon STEPHEN DAWSON: I am told that it will review the evidence so it can seek reports. SAT can have specialists on the tribunal. It can consider whether the person has been properly assessed under clause 6. I am advised that SAT is already well versed in this.

Hon NICK GOIRAN: Would a former treating medical practitioner for the patient be permitted to give evidence about the patient's medical record without the consent of the patient?

Hon STEPHEN DAWSON: I am advised that that would be a decision for the State Administrative Tribunal.

Clause put and passed.

Clause 88: Effect of decision under s. 87(a), (c) or (e) —

Hon NICK GOIRAN: Minister, there is no equivalent clause in our bill to clause 88 in the Victorian legislation. Why has the government deemed this clause necessary for inclusion in the Western Australian bill?

Hon STEPHEN DAWSON: I am advised that it is because we wanted to make it clear exactly what the effect of a SAT decision will be on whomever.

Clause put and passed.

Clause 89: Effect of decision under s. 87(b), (d) or (f) —

Hon NICK GOIRAN: Does the patient have a right to appeal a decision of the tribunal under clause 87(b), (d) or (f), which effectively renders them ineligible to access voluntary assisted dying?

Hon STEPHEN DAWSON: I am advised that under section 105 of the State Administrative Tribunal Act, they can appeal the tribunal decision only on a question of law, but they need leave to appeal.

Clause put and passed.

Clause 90: Coordinating practitioner may refuse to continue in role —

Hon NICK GOIRAN: Clause 90(2) provides that a coordinating practitioner must transfer their role to the consulting practitioner in accordance with clause 155 if they refuse to continue to perform the role of coordinating practitioner. What if the consulting practitioner refuses to accept the transferred role of coordinating practitioner?

Hon STEPHEN DAWSON: If the consulting practitioner refuses the transfer of the role, the original practitioner may refer the patient to another medical practitioner for a further consulting assessment and transfer the role of coordinating practitioner to that medical practitioner, if the practitioner accepts the referral for a further consulting assessment and assesses the patient as eligible for access to voluntary assisted dying and accepts the transfer of the role.

Hon NICK GOIRAN: In the interim, is the coordinating practitioner required or effectively forced to continue in the role of coordinating practitioner until a suitable person can be identified who is willing to be transferred this particular role?

Hon STEPHEN DAWSON: They need only find another person; they are obliged to transfer, but they do not need to advance the voluntary assisted dying process.

Hon NICK GOIRAN: Clause 90 also provides that only the coordinating practitioner may refuse to continue in the role. I note that section 73 of the Victorian legislation, which is the equivalent of clause 90, provides that the consulting practitioner, as well as the coordinating practitioner, may refuse to continue in their role. Why is provision not made in clause 90 or, from what I can gather, anywhere else in the bill, for the consulting or, indeed, the administering practitioner to refuse to continue in their role?

Hon Peter Collier; Hon Stephen Dawson; Hon Rick Mazza; Hon Tjorn Sibma; Hon Dr Steve Thomas; Hon Aaron Stonehouse; Hon Alison Xamon; Hon Jacqui Boydell; Hon Colin Tincknell; Hon Nick Goiran; Hon Sue Ellery; Hon Diane Evers; Hon Kyle McGinn; Hon Simon O'Brien; Hon Martin Aldridge; Hon Alannah MacTiernan; Hon Michael Mischin; Hon James Chown; Hon Colin Holt; Hon Donna Faragher; Hon Robin Chapple; Hon Martin Pritchard; Hon Adele Farina

Hon STEPHEN DAWSON: If the request and assessment process is complete, there is no further role for the consulting practitioner. The coordinating practitioner is a continuing role. The consulting practitioner has a fixed role of consulting assessment.

Hon NICK GOIRAN: Yes, but what about the administering practitioner?

Hon STEPHEN DAWSON: I am advised that the administering practitioner can transfer the role under clause 62(1)(c).

Hon NICK GOIRAN: If clause 90 did not appear in the bill, would it not be the case that the coordinating practitioner would already have the right to transfer the role, as the administering practitioner does, and that, in effect, clause 90 is unnecessary, albeit that the government may well say that it desires to have the provision in the legislation?

Hon STEPHEN DAWSON: Clause 90 highlights the continuing role of the coordinating practitioner in the voluntary assisted dying process. In answer to the honourable member's question: if the clause were not there, it would probably be of little effect. It is in the legislation out of an abundance of caution and an acknowledgement of the continuing role that they play in the process.

Clause put and passed.

Clause 91: Constitution and membership of Tribunal —

Hon NICK GOIRAN: Clause 91(2)(a) modifies the operation of section 11 of the State Administrative Tribunal Act. What is contained in that section and why does the government deem it necessary to modify the operation of the section? While the minister is contemplating that, my second question relates to section 115(5) of the State Administrative Tribunal Act, which is modified by subclause (2)(b). Why are sections 11 and 115(5) of the State Administrative Tribunal Act being modified under this clause?

Hon STEPHEN DAWSON: Clause 91(2)(a) under part 5 provides —

the Tribunal, when exercising its review jurisdiction, must be constituted by, or so as to include, a judicial member;

The President of the State Administrative Tribunal recommended the insertion of this provision into the bill. The intent of this subclause is to enable an appeal from a decision of the tribunal to be heard by the Court of Appeal in accordance with section 105 of the Western Australian State Administrative Tribunal Act 2004. Section 105 provides for an appeal to be made to the Court of Appeal if the decision was made by the tribunal constituted by members who include a judicial member. It should be noted that the president of the tribunal is a Supreme Court judge and the two deputy presidents are District Court judges. Their role is to ensure the effective functioning and independence of SAT and to resolve difficult questions of fact and law.

Subclause 91(2)(b) enables a public sector employee to be appointed to be a non-judicial member in respect of matters in the tribunal's review jurisdiction. This amendment was recommended by the president of SAT for insertion into the bill. Non-judicial members may be experienced in law or may be experienced in or have special knowledge of relevant professions, occupations and fields in which SAT makes decisions. Members may be full-time or sessional and may be appointed for up to five years. This subclause modifies the operation of section 117(5) of the State Administrative Tribunal Act 2004 to enable psychiatrists, psychologists and other persons with relevant skills and training—for example, a police officer—who are public sector employees to be appointed as sessional members to sit on a panel on a review under part 5.

Clause put and passed.

Clause 92: Hearings of Tribunal to be held in private —

Hon NICK GOIRAN: Clause 92 appears to modify the operation of section 61 of the State Administrative Tribunal Act. What is provided for in that section, and why has the government deemed it necessary to modify the operation of the section? It seems that the President of the State Administrative Tribunal has asked for quite a number of modifications, and this is the latest one.

Hon STEPHEN DAWSON: Section 61 of the SAT act provides for hearings to be public unless otherwise ordered. Hearings in relation to voluntary assisted dying matters should not be made public. This is to ensure that the patient is protected and supported as they go through the voluntary assisted dying process. It also offers protection from public intrusion to practitioners who participate in the process. This modification was supported by the president of the tribunal.

Hon NICK GOIRAN: Will family members of the patient be able to be present at tribunal hearings?

Hon STEPHEN DAWSON: I am told that it will depend on the tribunal. It will be a decision of the tribunal.

Hon Peter Collier; Hon Stephen Dawson; Hon Rick Mazza; Hon Tjorn Sibma; Hon Dr Steve Thomas; Hon Aaron Stonehouse; Hon Alison Xamon; Hon Jacqui Boydell; Hon Colin Tincknell; Hon Nick Goiran; Hon Sue Ellery; Hon Diane Evers; Hon Kyle McGinn; Hon Simon O'Brien; Hon Martin Aldridge; Hon Alannah MacTiernan; Hon Michael Mischin; Hon James Chown; Hon Colin Holt; Hon Donna Faragher; Hon Robin Chapple; Hon Martin Pritchard; Hon Adele Farina

Hon NICK GOIRAN: Presumably, that would be the case only when a family member is not an applicant.

Hon STEPHEN DAWSON: Generally, yes.

Hon NICK GOIRAN: In what circumstances would a family member who is an applicant not be able to be present at the tribunal hearing?

Hon STEPHEN DAWSON: It would generally be because the patient and the family member may be appearing before the tribunal in the same case, but there may well be extreme animus between them so they would be in two different rooms.

Clause put and passed.

Clause 93: Notice requirements —

Hon NICK GOIRAN: The explanatory memorandum states that under clause 93 notice is required to be given to the coordinating practitioner, the consulting practitioner, the administering practitioner—if that person is not, of course, the coordinating practitioner—the CEO and the board. This is said to be necessary to —

... ensure that persons and bodies who are not parties to the proceedings, but who have an interest in the proceedings, receive appropriate notice of applications and decisions or orders of the Tribunal.

Should a former coordinating, consulting or administering practitioner also be included?

Hon STEPHEN DAWSON: Those former practitioners play no ongoing role in the patient's care, but it is at the tribunal's discretion as to whether it may include them.

Clause put and passed.

Clause 94: Coordinating practitioner to give Tribunal relevant material —

Hon NICK GOIRAN: This clause modifies the operation of sections 24 and 35 of the State Administrative Tribunal Act. What do those sections provide for that the government has deemed is appropriate for modification?

Hon STEPHEN DAWSON: Section 24 of the SAT act relates to decision-makers giving the tribunal reasons for decisions being reviewed, and section 35 of the SAT act is about obtaining information from third parties. I am advised that we need specific provisions that are tailored to voluntary assisted dying-related decisions. The coordinating practitioner may not always be the decision-maker whose decision is being reviewed.

Clause put and passed.

Clause 95: Tribunal to give written reasons for decision —

Hon NICK GOIRAN: This clause modifies the operation of four sections of the State Administrative Tribunal Act—sections 75, 77, 78 and 79. What is provided for in those sections that the government has deemed appropriate for modification?

Hon STEPHEN DAWSON: I am not sure whether the honourable member needs me to identify what each of those sections is.

Hon Nick Goiran: If it is quick.

Hon STEPHEN DAWSON: I can say generally what each of them is for. They are about individual decisions made by the tribunal. Section 75 of the State Administrative Tribunal Act 2004 of WA is headed "To whom copy of written decision has to be given", section 77 is "Reasons for final decision", section 78 is "Written reasons may be requested" and section 79 is "Written decision or reasons using transcript". I am advised that we need to tailor these provisions specifically to the voluntary assisted dying process, because the SAT act is more generalist and the Voluntary Assisted Dying Bill is much more specific. Section 18 of the SAT act allows for modification of the SAT act. This will occur when specific provisions are better suited than the general provisions of the SAT act.

Clause put and passed.

Clause 96: Published decisions or reasons to exclude personal information —

Hon NICK GOIRAN: Before I move the amendment standing in my name at 475/96, I will provide a brief explanation for the benefit of members. In effect, this was an oversight in the bill that was picked up, in that the privacy protections in clause 96(1) do not extend to practitioners who may have held the role of coordinating practitioner at one point but have since transferred out of that role. Likewise, the current drafting of clause 96(1)

Hon Peter Collier; Hon Stephen Dawson; Hon Rick Mazza; Hon Tjorn Sibma; Hon Dr Steve Thomas; Hon Aaron Stonehouse; Hon Alison Xamon; Hon Jacqui Boydell; Hon Colin Tincknell; Hon Nick Goiran; Hon Sue Ellery; Hon Diane Evers; Hon Kyle McGinn; Hon Simon O'Brien; Hon Martin Aldridge; Hon Alannah MacTiernan; Hon Michael Mischin; Hon James Chown; Hon Colin Holt; Hon Donna Faragher; Hon Robin Chapple; Hon Martin Pritchard; Hon Adele Farina

provides protection only to the current consulting practitioner and not to other practitioners who have previously been involved in consulting assessments for the patient. For those brief reasons, I move —

Page 64, after line 23 — To insert —

(da) a former coordinating practitioner or consulting practitioner for the patient if the person is not a party to the proceeding;

Hon STEPHEN DAWSON: I indicate that we—for Hon Jim Chown's purposes, "we" means the government—are supportive of the amendment moved by Hon Nick Goiran at 475/96. We are also supportive of amendment 476/96. We accept these amendments. Certainly in relation to 475/96, the intent was to cover former practitioners in the bill, but there is no harm in being clear with the proposed amendment.

Amendment put and passed.

Hon NICK GOIRAN: I move —

Page 64, lines 25 and 26 — To delete "the administering practitioner for the patient." and substitute —
a person to whom the role has been transferred.

The reasons for this amendment have just been provided.

Hon STEPHEN DAWSON: Again, we support this amendment. It does not detract from the bill. It is a drafting amendment that says the same thing that is already in the bill, but we are supportive of it.

Amendment put and passed.

Clause, as amended, put and passed.

Clause 97: Interim orders —

Hon NICK GOIRAN: In what circumstances might the tribunal see fit to make an interim order?

Hon STEPHEN DAWSON: I am told an example of this may be that a person may require a temporary decision from the tribunal and will need to file an interim application form in addition to the standard application form.

Clause put and passed.

Clause 98: Unauthorised administration of prescribed substance —

Hon MICHAEL MISCHIN: I have a few questions regarding part 6 generally, but we will start off with clause 98. Clause 98 provides that a person commits a crime if they administer a prescribed substance to another and they are not authorised to administer that prescribed substance to the other person. The clause prescribes a penalty of imprisonment for life. Why is it imprisonment for life? Is it regarded as being akin to attempted murder?

Hon STEPHEN DAWSON: As Hon Michael Mischin pointed out, the penalty under this clause is life imprisonment. This reflects the seriousness of anyone administering a voluntary assisted dying substance outside the process allowed under the legislation. I am advised that this is consistent with similar provisions under the Criminal Code—sections 279, 280 and 283.

Hon MICHAEL MISCHIN: In which court would those offences under the Criminal Code be tried?

Hon STEPHEN DAWSON: The Supreme Court, honourable member.

Hon MICHAEL MISCHIN: Is that the case for an offence contrary to clause 98?

Hon STEPHEN DAWSON: Yes.

Hon MICHAEL MISCHIN: I ask that because last week I received a copy of a document of some eight pages, signed by the president of the Law Society of Western Australia, Mr Greg McIntyre, SC, entitled "Submission to the Voluntary Assisted Dying Bill 2019 (VAD Bill)", and dated 27 November 2019. I understand I received a copy of the same document that had been sent to the Premier, the Minister for Health and the Attorney General. Some observations are made in the submission regarding the offence provisions in part 6 of the bill. Has the minister been given access to that document and any advice from either his instructing minister or the Attorney General regarding the content of that document and the matters it raises?

Hon STEPHEN DAWSON: I have not seen it. Can I ask the member to table the document?

Hon Michael Mischin: Not a problem at all, but I confess some surprise that —

Hon Peter Collier; Hon Stephen Dawson; Hon Rick Mazza; Hon Tjorn Sibma; Hon Dr Steve Thomas; Hon Aaron Stonehouse; Hon Alison Xamon; Hon Jacqui Boydell; Hon Colin Tincknell; Hon Nick Goiran; Hon Sue Ellery; Hon Diane Evers; Hon Kyle McGinn; Hon Simon O'Brien; Hon Martin Aldridge; Hon Alannah MacTiernan; Hon Michael Mischin; Hon James Chown; Hon Colin Holt; Hon Donna Faragher; Hon Robin Chapple; Hon Martin Pritchard; Hon Adele Farina

The DEPUTY CHAIR (Hon Martin Aldridge): Member, only one member can have the call.

Hon STEPHEN DAWSON: It has been received by the government, but I ask the member to table it so that I can have a copy in front of me. If the member is referring to particular parts of the document, I can answer questions about them. If the member does not want to table it but wants to facilitate getting me a copy, that will do the same thing.

Hon MICHAEL MISCHIN: I am happy to table a copy of it. I confess some surprise that the government has not favoured the minister with a copy of it and some advice as to the matters raised therein. I seek leave to table a copy of the document that I have just described.

Leave granted. [See paper 3474.]

Hon MICHAEL MISCHIN: Hon Nick Goiran has in the interim provided me with a further copy of the document, which I can perhaps pass to the minister while we are waiting for other copies to be distributed.

I draw the minister's attention to the base of page 7 of that document. I will read it out for the record. It comes under the heading "4. Criminal Law" and the subheading "4.1 Offences". Paragraph 4.1.1 states —

The Society wishes to point out that, following recent amendments to the jurisdiction of the District Court, allowing it jurisdiction to deal with offences attracting a penalty of life imprisonment, the offences of unauthorised administration of a prescribed substance (clause 98) and inducing self-administration of a prescribed substance (clause 100) would be dealt with in the District Court, not the Supreme Court. This contrasts with the offences of wilful murder, murder and manslaughter, which are not within the jurisdiction of the District Court and must be determined in the Supreme Court.

The minister has told us that that is not going to be the case. The Law Society has come to a different view. I am wondering whether the minister might be able to assist us.

Hon STEPHEN DAWSON: The honourable member is correct; I have to give an apology. Recent amendments have been made to the law to permit the District Court to consider certain offences. Section 42 of the District Court of Western Australia Act 1969 gives the District Court jurisdiction unless the offence is prescribed. However, the jurisdiction does not limit or diminish the jurisdiction of the Supreme Court. The District Court would have jurisdiction unless the exclusion of the offences was prescribed in the District Court of Western Australia regulations, but this does not limit the jurisdiction of the Supreme Court. I am advised that the Law Society of Western Australia's view would be taken into consideration, but the Department of Health would seek further views on this matter from the Attorney General, the Solicitor-General, the Director of Public Prosecutions, the Supreme Court and the courts and tribunals.

Hon MICHAEL MISCHIN: I thank the minister, and I am not blaming the minister for the error in this. However, I am surprised, as I indicated, that the Premier, the minister's instructing minister and the Attorney General did not provide the minister with a copy of this document and brief him on the issues that are raised in it, in particular the issues that I am about to cover about the criminal enforcement of the provisions of the Voluntary Assisted Dying Bill. As the minister said, section 42 of the District Court of Western Australia Act provides essentially that the District Court has all the jurisdiction and powers of the Supreme Court in respect of any indictable offence, and, because this is defined as a crime, that makes it, by definition, an indictable offence by reason of the Interpretation Act 1984. Section 42(2) provides that the court does not have jurisdiction to try an accused person charged with an indictable offence that is a crime under sections 279, 280, 283, 288 or 290 of the Criminal Code—all of which are homicide-type offences—nor does it have jurisdiction to try a person charged with an indictable offence that is an offence, or offence of a class, prescribed in the regulations. Can the minister assist us as to whether any offences have been prescribed in the regulations to date?

Hon STEPHEN DAWSON: Sorry, but the member will have to ask that question again—just that last bit.

Hon MICHAEL MISCHIN: Can the minister tell us whether to date any offence, or a class of offences, has been prescribed in regulations under the District Court of Western Australia Act that require trial by the Supreme Court, in addition to the ones that are stated; and, secondly, whether the government plans to pass a regulation that requires a charge under proposed section 98 of the Voluntary Assisted Dying Bill to be tried by the Supreme Court?

Hon STEPHEN DAWSON: To my knowledge, no regulations have been made thus far. In relation to whether the regulations will be amended, that will be decided in consultation with the DPP, the Attorney General and the courts during the implementation phase, so upon the passage of the bill and the amendment.

Hon Peter Collier; Hon Stephen Dawson; Hon Rick Mazza; Hon Tjorn Sibma; Hon Dr Steve Thomas; Hon Aaron Stonehouse; Hon Alison Xamon; Hon Jacqui Boydell; Hon Colin Tincknell; Hon Nick Goiran; Hon Sue Ellery; Hon Diane Evers; Hon Kyle McGinn; Hon Simon O'Brien; Hon Martin Aldridge; Hon Alannah MacTiernan; Hon Michael Mischin; Hon James Chown; Hon Colin Holt; Hon Donna Faragher; Hon Robin Chapple; Hon Martin Pritchard; Hon Adele Farina

Hon MICHAEL MISCHIN: One would hope that although contraventions of proposed section 98 would be rare, they would be tried by the Supreme Court alone, given that they would carry a term of life imprisonment and would be akin to at least negligent homicide, if not attempted murder. I will leave that one there.

Hon STEPHEN DAWSON: The honourable member's views are noted, as are the views that were expressed by the Law Society. I will certainly ensure that they are fed into the process.

Hon Michael Mischin: Is the minister able to —

The DEPUTY CHAIR (Hon Matthew Swinbourn): Hon Michael Mischin, I have not given you the call. I was about to give the call to Hon Adele Farina, who had sought the call, but I think she has been gracious enough to let you continue.

Hon MICHAEL MISCHIN: Thank you; I appreciate that. I have only one further question.

Is the minister able to seek advice from the responsible ministers and, when we reconvene tomorrow, provide us with some indication of whether the government has in mind that an offence against clause 98 will have the same gravity as homicide offences in the Supreme Court, and whether it proposes to regulate, in due course, that these will be dealt with by only the Supreme Court? Maybe the government has not formed a position on it, but in light of the Law Society having provided this information last week, I would have thought that someone would have turned their mind to it in the meantime and come to a view on how these sorts of offences ought to be dealt with.

Hon STEPHEN DAWSON: I can tell the honourable member that the matter is under consideration but it will not be decided until after the Director of Public Prosecutions, the courts and the Attorney General have been consulted. That will be dealt with during the implementation phase.

Hon ADELE FARINA: Could the minister explain to the chamber what constitutes “administers”? Would that include mixing the voluntary assisted dying substance with a sweet drink? Would it include holding the glass for the patient while the patient drinks? Would it include giving the VAD substance and the sugary substance to the patient, so the patient can mix them? Would all those constitute “administering”?

Hon STEPHEN DAWSON: I ask the honourable member to repeat the third example.

Hon ADELE FARINA: I would be happy to, minister. The third example was providing the VAD substance and the sugary drink to the patient so the patient could mix them up themselves. My question is: does any one of those or all three of those constitute administering?

Hon STEPHEN DAWSON: “Administers” is to be distinguished from “supply” and “prepare”. Only the patient or administering practitioner can prepare a voluntary assisted dying substance. Mixing is preparation. Regarding providing the substance to the patient, I have indicated that only the patient or the administering practitioner can prepare a voluntary assisted dying substance. In relation to holding the glass, that is possibly administering. If the person is actually pouring the substance down the patient's throat, my advice is that that would be administering.

Hon ADELE FARINA: What about if the patient drinks it through a straw and the carer just holds the glass?

Hon STEPHEN DAWSON: I am advised that that is not administering. The patient would actively be sucking through the straw. It is not administering.

Hon ADELE FARINA: If the patient needs to have it administered through a feeding tube, would connecting the substance to the feeding tube constitute administering?

The DEPUTY CHAIR: Before I give the call to the minister, I just note that another supplementary notice paper has been circulated. It is supplementary notice paper 139, issue 18, for members to note.

Hon STEPHEN DAWSON: The answer to that one is yes, it is administering.

Hon NICK GOIRAN: Regarding the enforceability of clause 98, how will sufficient evidence be found when unauthorised administration of the prescribed substance is alleged, particularly in light of the evidence provided to the Joint Select Committee on End of Life Choices by the Director of Public Prosecutions —

... there is only one person left, usually, to tell what happened, and that is the person who is under investigation. That is a real problem for us.

The director made this statement about the prosecution of cases in which it is alleged that the doctor has wrongly hastened the death of a patient. The Director of Public Prosecutions went on to state —

Hon Peter Collier; Hon Stephen Dawson; Hon Rick Mazza; Hon Tjorn Sibma; Hon Dr Steve Thomas; Hon Aaron Stonehouse; Hon Alison Xamon; Hon Jacqui Boydell; Hon Colin Tincknell; Hon Nick Goiran; Hon Sue Ellery; Hon Diane Evers; Hon Kyle McGinn; Hon Simon O'Brien; Hon Martin Aldridge; Hon Alannah MacTiernan; Hon Michael Mischin; Hon James Chown; Hon Colin Holt; Hon Donna Faragher; Hon Robin Chapple; Hon Martin Pritchard; Hon Adele Farina

... at the end of the day it is one person's say-so and that is the person administering the treatment. The patient, of course, is deceased.

In light of that, what confidence can we have that the new offence in clause 98, included to provide protection for vulnerable individuals against wrongful death, can be effectively investigated and prosecuted?

Hon STEPHEN DAWSON: I am advised that evidence will be masked in the usual way, as per an investigation into a murder or other serious crime. A witness, including a concerned family member or carer, may raise concerns with police.

Hon MICHAEL MISCHIN: Is the minister able to tell us what advice or consultation took place in the crafting of the offence contained in proposed section 98? The minister said that the Director of Public Prosecutions is yet to be consulted regarding which jurisdiction this offence will be tried in, but did the DPP give advice about the formulation of the offence and its elements?

Hon STEPHEN DAWSON: I am told that the Department of Justice, the Solicitor-General, the Director of Public Prosecutions and the Western Australia Police Force have been consulted on the offence provisions and penalties, and are agreeable to the provisions. The Office of the Director of Public Prosecutions was consulted and was provided with a consultation draft of the bill.

Hon MICHAEL MISCHIN: How did it respond to the consultation draft of the bill? Did it have any specific comment about the provability of what is planned in clause 98?

Hon STEPHEN DAWSON: I am advised that the DPP, the Attorney General's office and the Solicitor-General met, and the settled positions are in the bill before us.

Hon MICHAEL MISCHIN: The reason for my concern is that although the offences in the Criminal Code are fairly simple, I observe there are many elements to this particular planned offence. Bear in mind that each of these elements would need to be proven by the prosecution beyond reasonable doubt and possibly in the absence of a key witness, because death does not have to be one of the outcomes in order to establish the offence. In order to prove this offence, it would have to be established beyond reasonable doubt that the accused administered something; that that "something" was a prescribed substance within the meaning of the act; that it was administered to another person; and that the person doing the administering was not authorised to do so by section 58(5). The following matters at section 58(5) would need to be proven beyond reasonable doubt: if an administering practitioner were not satisfied at the time of administration that the patient had decision-making capacity in relation to voluntary assisted dying; and/or the patient is acting voluntarily and without coercion; and/or the patient's request for access to voluntary assisted dying was enduring. A lot of things would potentially have to be proven beyond reasonable doubt and we are looking at a circumstance that may have little incentive on the part of other witnesses to come forward and say anything about. But if that is what we are looking at as an offence in the legislation, so be it. I wonder why it is that simply prescribing a simpler offence, a failure to comply with the provisions of the act, does not establish an offence of a similar import to that of attempted murder or assisting a suicide. Nevertheless, I have no other comments to make about this particular clause.

Hon ADELE FARINA: In response to my earlier question about the examples, the minister indicated that there was a difference between administration and preparation so that if a carer or family member mixed the substance together with the sugary drink, that was preparation and did not fall under the provisions of this offence. Is it the case that a family member or carer can prepare the voluntary assisted dying substance for the patient?

Hon STEPHEN DAWSON: No. Only the patient or the administering practitioner can prepare a voluntary assisted dying substance, in the case of self-administration. Sorry, the patient in the case of self-administration, and the practitioner in the case of practitioner-administered voluntary assisted dying.

Hon ADELE FARINA: Where is the offence if someone other than the patient prepares the substance in the case of self-administration, or someone other than the administering practitioner prepares the substance in the case of administration by a medical practitioner?

Hon STEPHEN DAWSON: I am told that, depending on the substance, it could be an offence that is captured under either the Misuse of Drugs Act 1981 or the Medicines and Poisons Act 2014.

Hon ADELE FARINA: Why was an offence not included in this legislation? If it is an offence, under the legislation, to administer a prescribed substance, why is it not also an offence to prepare a substance if no-one other than the patient in the case of self-administration and the medical practitioner in the case of being administered by a medical practitioner can prepare the substance to safeguard that?

Hon Peter Collier; Hon Stephen Dawson; Hon Rick Mazza; Hon Tjorn Sibma; Hon Dr Steve Thomas; Hon Aaron Stonehouse; Hon Alison Xamon; Hon Jacqui Boydell; Hon Colin Tincknell; Hon Nick Goiran; Hon Sue Ellery; Hon Diane Evers; Hon Kyle McGinn; Hon Simon O'Brien; Hon Martin Aldridge; Hon Alannah MacTiernan; Hon Michael Mischin; Hon James Chown; Hon Colin Holt; Hon Donna Faragher; Hon Robin Chapple; Hon Martin Pritchard; Hon Adele Farina

Hon STEPHEN DAWSON: I am advised that we will be making consequential amendments to the Medicines and Poisons Act and the Misuse of Drugs Act on this issue.

Hon ADELE FARINA: Are the consequential amendments that the government is proposing to the other acts included in the bill?

The DEPUTY CHAIR: Member, I am struggling to see how this fits with the question that clause 98 stand as printed. You were talking about offences that might be or should be included rather than one that is before us. I will let the minister answer your question.

Hon STEPHEN DAWSON: Those amendments are in part 11 of the bill.

Clause put and passed.

Clause 99: Inducing another person to request or access voluntary assisted dying —

Hon NICK GOIRAN: Clause 99(2) states —

A person commits a crime if the person, by dishonesty, undue influence or coercion, induces another —

- (a) to make a request for access to voluntary assisted dying; or
- (b) to access voluntary assisted dying.

The penalty can be imprisonment for seven years. What happens if the person dies as a result of that dishonesty, undue influence or coercion—that is, the inducement leads to the death of the person? Surely a penalty of seven years is woefully inadequate in those circumstances. Is there another offence in this bill or elsewhere that would capture that situation?

Hon STEPHEN DAWSON: Clause 100 is the avenue for self-administration.

Hon NICK GOIRAN: We are not just talking about self-administration in this bill; we are also talking about practitioner administration. I want to know how the provisions of clause 99(2) work if the inducement leads to the death of the patient. A person may be induced by way of dishonesty, undue influence or coercion. As the minister quite rightly pointed out, that occurs in the context of self-administration, and clause 100 kicks in. What happens if self-administration is not the preferred method?

Hon STEPHEN DAWSON: A person being induced to attend practitioner administration is not the same as a person being induced to self-administer. The coordinating practitioner is the buffer. In the case of practitioner administration, the practitioner has to be satisfied of several things at the time of administration. As the member pointed out, the maximum penalty for the offence in clause 99 is seven years' imprisonment. Provision is also made for a summary conviction penalty of three years' imprisonment and a fine of \$36 000. The drafting team met with the Department of Justice to discuss the appropriate penalties. In landing upon this penalty, the drafting team took the advice from the Department of Justice, the WA Police Force, the Solicitor-General and the Director of Public Prosecutions. It is consistent with sections 301 and 304 of the Criminal Code where there is a similar penalty regime.

Progress reported and leave granted to sit again, pursuant to standing orders.