VOLUNTARY ASSISTED DYING BILL 2019

Consideration in Detail

Resumed from an earlier stage of the sitting.

Debate was interrupted after clause 85 had been agreed to.

Clause 86: Review application taken to be withdrawn if patient dies —

Mr R.H. COOK: Mr Acting Speaker, with your indulgence, may I make a quick statement of clarification. I wish to clarify a statement made yesterday in response to a query from the member for Darling Range about the patient being informed about complications from the medication. Rather than it being a requirement under the Medicines and Poisons Act, it is a requirement under the code of conduct of the Medical Board of Australia that practitioners discuss management options with their patients, including potential benefit and harm. This code is issued under section 39 of the Health Practitioner Regulation National Law Act 2010. As noted at the time, the bill also specifically requires the coordinating practitioner and consulting practitioner to provide this information under clauses 26 and 37 respectively.

Mr P.A. KATSAMBANIS: Clause 86 is relatively simple. It states —

> A review application made in relation to a patient is taken to be withdrawn if the patient dies.

That, in its ordinary reading, makes a lot of sense.

Mr R.H. Cook: It is not counterintuitive.

Mr P.A. KATSAMBANIS: It is not counterintuitive at all; it is totally intuitive. However, was any consideration given to allowing the tribunal a small opportunity to determine—perhaps by using words along the lines of, "unless the tribunal determines it is in the interests of justice not to"? I ask that because we are dealing with a jurisdiction that is brand new. We are dealing with multiple issues that could arise. We are also not quite sure where in the process a matter might be. The matter might not have been heard yet, in which case it should be good to lapse at all times. The application might have been brought by the patient, so it would obviously make good sense for it to lapse. However, there might be the possibility of an adverse finding against a practitioner, or an area of law might have been argued, the arguments have been heard, and the tribunal is ready to make its decision, and, irrespective of whether the patient has passed away, it might serve the interests of justice for the tribunal to continue to either make a decision, or conduct a hearing and a process. I know that those matters are likely to be rare, but out of simple administrative efficiency for a tribunal, and to inform the public and to have better judicial or quasi-judicial outcomes, as tribunals provide, I wonder whether consideration had been given to that? If it has not been given, would consideration be given to it in the passage of this bill between the houses? I do not think it weakens the intent of this clause in any way, but allows for that potential externality—that one in a thousand—where it may just be the right thing for the tribunal to still deliver its decision even if the patient has passed away.

Mr R.H. COOK: Obviously the tribunal might pursue something following the death of a patient for the sake of creating a precedent in law or clarifying some particular issue around the law. I can certainly see some application in the Supreme Court that ultimately has the capacity of becoming involved in matters dealing with vulnerable citizens. However, the tribunal will be making decisions around a limited scope of issues. It is essentially there to resolve issues around changing or reviewing a decision that would have effect with regard to that patient. If the patient has passed away, there is no more need for the tribunal to continue to make that change or review. Because there is no dispute, ultimately it is impossible for the tribunal to arbitrate because clearly one of the parties is not there to advocate on their own behalf. From that perspective, it was not considered, but I understand the point that the member is making. I refer the member to the following clause, which will be discussed in a short while. It refers to the review application made in relation to a patient that the tribunal may decide upon. It sets out the context and the issues around which the tribunal may make a decision. In that sense, it is a fairly limited function as well, but ultimately the tribunal is there to resolve the issue for the patient. If the patient is not there, the issue about the patient accessing voluntary assisted dying is a moot point and there is no point in persisting with the inquiry.

Mr P.A. KATSAMBANIS: I do not want to labour this point but the minister pointed to clause 87, which states —

> In determining a review application made in relation to a patient the Tribunal may decide that —
>
> (a) at the time of making the first request, the patient had been ordinarily resident in Western Australia for a period of at least 12 months;

That could be something that had already been well argued in the tribunal, the tribunal was ready to make its decision and the patient died. It may well be in the interests of justice, especially in the early days of interpreting this legislation, for the tribunal to deliver a decision so that other people are aware of what the tribunal's precedent,

if you like, is likely to be in this sort of area. That is why I couched my suggestion in clause 86 around the matter of the tribunal making the decision because it was in the interests of justice to continue. If the government does not want to do that, that is fine, but it would be an improvement to the legislation and an improvement that would ensure the public was informed about how the tribunal would interpret these clauses in this legislation, if that small change could be made in the future.

Mr R.H. COOK: The member is probably more familiar with the role of a tribunal versus a court and such things, so I will not argue that particular point.

Mr P.A. Katsambanis: Probably more than anyone in this place, having served on two for six years!

Mr R.H. COOK: Of course, yes.

Indeed, there is already case law relating to the particular issue that the member described. In any event, I appreciate that he is using that as an example of something around which he might want to create some precedence. I guess, from that perspective, I appreciate the observation the member is trying to make. I will resist the opportunity to make an amendment, but I will reflect on it, so thank you very much

Mr P.A. KATSAMBANIS: For completeness, and perhaps I did not spell it out right at the outset, it is an axiom of administrative law that upon the withdrawal of an application, a tribunal loses jurisdiction completely. It is not as if the matter is deemed to be ceased or the tribunal will no longer continue to hear the matter, it is as if the tribunal never received the matter in the first place. Its hands are completely tied in those circumstances. There is no need to respond, that was just for completeness.

Mrs A.K. Hayden: Acting Speaker.

The ACTING SPEAKER (Mr S.J. Price): Member for Dawesville—Darling Range, sorry.

Mrs A.K. HAYDEN: I have deja vu! We are doing it again.

Mr R.H. Cook: I will observe that at this point in the proceedings last night, the Deputy Speaker offered an opinion about the relative good looks between the two members, so we are inviting you to do the same this evening.

Mr S.J. Price: That was very brave of the Deputy Speaker.

Mrs A.K. HAYDEN: That is very kind to call them brave. Thank you minister and thank you Acting Speaker.

Clause 86 states —

> A review application made in relation to a patient is taken to be withdrawn if the patient dies.

I apologise, I was out of the chamber for the previous clause, but that is that the voluntary assisted dying application will stop so the tribunal review will start. I do not want to assume, but just for the record, is that if the patient dies of natural causes? Is that correct?

Mr R.H. COOK: Member, I guess the legislation is silent on that. The review application is the application made by the patient. Ultimately, regardless of the manner in which the patient dies, the application ceases because there is no-one to advance the application on their behalf.

Mrs A.K. HAYDEN: Thanks minister, that is what I want to be sure of. It is not that they have the substance and have used VAD or anything, it is before then and they have not had any access to it. I just wanted to make that perfectly clear.

I know that the member for Hillarys asked a question about this, but I do not understand why the review would be stopped if an error has occurred or been investigated by the tribunal. Why are we not following through on that to make sure that that error does not occur again? I understand—if I have it wrong please correct me—that if a coordinating or consulting practitioner has made an error in the request or the assessment process, that is one of the reasons that the review has been done. Just because the patient has passed away, should we not be checking that if an error has occurred it will be fixed and rectified for any future patients?

Mr R.H. COOK: Regarding the role of the State Administrative 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 can obviously not proceed with the voluntary assisted dying process, so there will be no decision for the tribunal to make. The SAT's decision ultimately would not be required because it would have no effect. It would not 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.

Mrs A.K. HAYDEN: We can debate this in clause 87, "Decision of Tribunal", but clause 87(c) states —

> the patient has decision-making capacity in relation to voluntary assisted dying;

I understand that this review will occur if someone believes that it has not been done properly. It will be checked and reviewed to make sure it is accurate so a decision will have been made. Will every case go through SAT or only those referred to the tribunal?

Mr R.H. COOK: The tribunal's role is, essentially, to decide whether a patient may have been rejected because they do not have decision-making capacity. The patient could say, "I think I do have decision-making capacity and I disagree with the coordinating practitioner, so I will go to SAT to prove my point." If the patient is no longer alive to continue the application, obviously it will lapse. That is essentially the reality of the process that would be undertaken.

Mrs A.K. HAYDEN: If, for example, as under paragraph (e), the patient is acting voluntarily and without coercion and has gone through the review because they have been told they are acting without coercion and someone else believes they are being coerced, what will happen when they have passed away? How do we make sure that coercion does not continue? If it becomes a dispute and goes to the tribunal and the patient passes away, can someone else say they believe the patient has been coerced by their brother? The daughter and brother are arguing; they do not get along and the mother has decided to access VAD, and the daughter believes the mother has been coerced. What will happen then? If the patient dies of natural causes, how do we follow through to make sure there was no coercion?

Mr R.H. COOK: If a patient believes that they are acting voluntarily and without coercion, and the coordinating practitioner says, "Look, I think your aunty has a bigger role to play in this decision, I do not think you are acting voluntarily", that patient may go to the State Administrative Tribunal to press their case. I suspect it would be a very rare occasion, but it may be that an interested party who has a fairly high level of involvement may similarly go to the tribunal on behalf of a patient. Ultimately, the tribunal will make a decision about that, but it will not make a finding of criminality. That would be the responsibility of the chief executive officer, or, indeed, the police, if they believe that coercion is involved in the process. In that instance, I do not think the tribunal is playing the role that the member is potentially visualising. It is not there to make a punishment or to assess the seriousness of a finding; it is there simply to make a finding. It is then the responsibility of associated parties. Perhaps the tribunal would refer the matter to the police if it thought that there was a serious case of coercion, but that is not the intent of the tribunal's role in this process. It will form a view about these things, and if it believes it to be serious and of a criminal nature, then, obviously, the police have to step in, from that perspective.

Mrs A.K. HAYDEN: I thank the minister for that explanation. One last quick question, because that will make it very clear. In a situation where it is believed that coercion was occurring, and the patient dies, does that review stop, or is there another avenue for the review to continue? As the minister said, is there a responsibility for the investigation to be passed on to the authorities after the patient has died?

Mr R.H. COOK: The tribunal's role stops, but, obviously, if people are concerned that coercion has been involved or there has been some behaviour which falls outside the voluntary assisted dying laws, then, clearly, they would refer it on. I am advised that, obviously, coercion cannot continue if the patient is deceased. The Voluntary Assisted Dying Board and the State Administrative Tribunal could report to the appropriate authority if they suspected any criminal behaviour; I think I made that comment before. Specifically, there is no role for the tribunal to make a decision, because it is not a party that is subject to the hearing, but that does not mean other people cannot investigate what has gone on. As the member knows, the chief executive officer, the Health and Disability Services Complaints Office, the Western Australia Police Force and the Australian Health Practitioner Regulation Agency all hold a whole range of powers of investigation into these things.

Dr M.D. NAHAN: Just to follow up on that hypothetical: If the tribunal looked at an issue and found that there was coercion, or the coordinating practitioner decided that he was not going to approve the process, the patient brought it to the tribunal, and the tribunal found an egregious case of coercion that actually did not work—the tribunal ruled against it, or the person died, or whatever—could the minister explain what the process would be? If that came to pass, and there was a decision by the tribunal, in this case, or the coordinating practitioner might say, "This is just over the top and what you're doing is really wrong", would the tribunal, the coordinating practitioner or one of the other practitioners report that to the police or to the Voluntary Assisted Dying Board? How would they take action?

Mr R.H. COOK: I will give the member a similar response as I gave to the member for Darling Range: it might be a tribunal member; it might be a doctor observing another doctor's behaviour. There is a whole range of avenues that people could use to bring something to the attention of the authorities. One could imagine: if they thought there was something of a criminal nature or particularly insidious going on, they would take it to the police. If they thought it was simply a doctor not taking care in a professional context, they might take it to AHPRA. If they felt there was something completely inappropriate happening, they would take it to the chief executive officer of the Department of Health. Maybe, ultimately, if the board is involved in some level of oversight, it, too, could refer matters to those sorts of authorities, but these are avenues that are available to any citizen.

Dr M.D. NAHAN: I would like to explore it because one of the issues is the potentially insidious nature of coercion. We hear that this review process with the tribunal might flesh it out more, and I think it would, to my mind at least, strengthen the bill if we had a statement somewhere that later on we will enforce a penalty of life imprisonment for someone who coerces someone to pursue voluntary assisted dying. Let us say we do not go that far. Will the board make rulings or provide guidance to practitioners that if they find undue coercion—that word would have to be defined, and lawyers are good at that—it should be reported to the board, because it could have a negative outcome? If it is covered later, we can go through it then, but I think we have hit on something—anything that has a review process. If we find out that people are unduly coercing their loved one to pursue this process inappropriately or against that person's underlying will, it would be positive for this. I want to know if the minister can explain. Let us say a coordinating practitioner finds egregious coercion. They might go to the tribunal or they might just say, "No". It seems to me that if a coordinating practitioner finds egregious coercion, it is incumbent upon that person to take it to a higher authority. I think this would strengthen VAD quite significantly. How is that practitioner going to be informed how to do that, should they do it, noting that this is a very delicate situation in which someone is dying? Where are the pathways for the interested parties, the tribunal and practitioners to take it to a higher authority when they see what they perceive to be, or what is designated in the legislation to be, improper behaviour?

Mr R.H. COOK: Certainly there are offences for that, and we will come to them in due course. This simply makes the observation that if there is no-one to progress the patient's application because the patient has died, the process ultimately stops. With regard to the member's observation about a coordinating practitioner finding coercion, there are a number of things they would do. If I may make an observation, they have obligations as medical practitioners under their own codes of conduct and the laws that govern their profession. If they are an individual within the community and they are aware of behaviour that is potentially criminal, they have an obligation as a citizen to undertake activities in that regard as well. There are certainly clauses coming later on that deal with the issue of coercion and the offences that deal with it.

Clause put and passed.

New clause 86A —

Ms M.M. QUIRK: I move —

Page 58, after line 12 — To insert —

86A. Tribunal review of Board's decision in relation to notice of no objection —

(1) The Board is a party to the proceeding for a review application made in relation to a decision of the Board to give, or refuse to give, the coordinating practitioner for a patient a notice of no objection under section 117A.

(2) In determining a review application made in relation to a decision of the Board to refuse to give the coordinating practitioner for a patient a notice of no objection under section 117A, the Tribunal may set aside the decision to refuse to give the notice if satisfied that there were no reasonable grounds for the refusal.

(3) If the Tribunal sets aside the decision under subsection (2), the Board must give a notice of no objection to the coordinating practitioner.

(4) In determining a review application made in relation to a decision of the Board to give the coordinating practitioner for a patient a notice of no objection under section 117A, the Tribunal may set aside the decision to give the notice if satisfied that there were reasonable grounds for refusing to give the notice.

(5) If the Tribunal sets aside the decision under subsection (4), the notice of no objection has no effect for the purposes of section 57(1)(b) or 58(1)(b).

The minister may recall that I talked about this yesterday in the context of making the work of the board real time—in other words, the board can issue a notice of no objection under proposed new clause 117A, which is yet to be moved. The scheme is about the board being able to issue a notice of no objection to the matter proceeding. That means that it looks at all the various criteria and forms that have been submitted to the board and issues what is known as a notice of no objection. Clause 86A is the right of appeal to the tribunal in the case of the board either giving or refusing to give a patient a notice of no objection under proposed new clause 117A. For the reasons that we talked about yesterday, we are concerned that the board is really only dealing with historical issues and there is no capacity for it to have contemporaneous oversight of the process.

Mr P.A. KATSAMBANIS: I stand in support of the amendment moved by the member for Girrawheen. The issues around proposed new clause 117A were well canvassed yesterday. I do not intend to repeat them. This is

one of the amendments that flows on from that. I think proposed new clause 117A is an important provision to include. Once it is included, obviously the tribunal needs to have the power to review that sort of decision, and so that is what this new clause that is before us does. Given that I have already indicated my support for proposed new clause 117A, I also indicate my support for the consequential amendments, including this one.

New clause put and negatived.

Clause 87: Decision of Tribunal —

Dr D.J. HONEY: Minister, looking at this clause, I assume the point of it is to try to restrict the scope of the tribunal in terms of the decision that it can make. That is pretty clear from this clause. I have a problem with clause 87(e) in which the patient is acting voluntarily and without coercion. I want to read out a couple of definitions to aid this discussion. Looking at a definition of coercion, which I think is reasonable, it is the action or practice of persuading someone to do something by force or threats—the keywords being "force or threats". Therefore, coercion is a very active thing in which someone is actively doing something—we would assume—for a bad purpose. Whether it is bad or not, it is something that is very forceful. I have had a lot of discussions. I can say that every lawyer whom I talked to about this bill raised the issue of undue influence, because it is so pervasive in commercial transactions, in particular, between relatives and friends or when someone can benefit. In this case, the benefit may be relief from stress or financial relief. The definition for undue influence, which, again, I think is a reasonable definition, is the influence by which a person is induced to act otherwise than by their own free will or without adequate attention to the consequences. I think the minister can see that that is quite different from coercion, which is about force or threats; whereas, undue influence is induced. It may be induced through using a familiar relationship or through someone expressing concern about the difficulty that this person is causing them but is in an otherwise caring relationship.

I wondered why the definition in this clause is limited to coercion. Does the minister consider—I think this is important for the interpretation of this in the future when people are reading this act and this debate—that his definition of coercion also includes undue influence? Does the minister think that this is an unintended oversight and that undue influence should be included? Alternatively, does the minister think that the State Administrative Tribunal should not consider undue influence when it reviews the matter?

Mr R.H. COOK: We canvassed these issues extensively on clause 15, so I do not mean to go over them again. Language such as "voluntary" and "coercion" is already used in the context of the tribunal. If someone has been the subject of undue influence, he or she is not, by definition, acting voluntarily and without coercion. I understand the point that the member is making but, as I observed, we canvassed this extensively on clause 15. As I expressed then, we are perfectly comfortable with the language that is used, which captures the behaviours that have been described.

Dr D.J. HONEY: I am not trying to be repetitive, but I am concerned. I can see this clause limiting, to some extent, what the State Administrative Tribunal can do. To make that very clear, does the minister believe that, in deciding whether a certain act or a decision of a doctor or the like was appropriate, the tribunal can consider whether there was undue influence? I just want that to be very clear.

Mr R.H. COOK: Yes, and we sought feedback from SAT about these clauses and it has said that they are absolutely appropriate.

Mr Z.R.F. KIRKUP: I am trying to get an understanding about the tribunal having to be aware of the issues outlined in paragraphs (c) to (f). An extensive training program will be put in place for practitioners. Will something similar be put in place for tribunal members if they have to be on the lookout for coercion or something like that? I am keen to understand whether they would be exposed to a similar training program.

Mr R.H. COOK: Obviously, tribunal members will be able to draw upon expert evidence or witnesses on these issues. These guys are already experts in a lot of respects. They already make decisions under the Guardianship and Administration Act and other acts of Parliament. They deal with issues around coercion and so on. From that perspective, obviously, we would expect them to have the skills but, in addition, they can draw upon the work of expert witnesses. Essentially, this is stuff they do.

Ms M.M. QUIRK: Again, I have an amendment on the notice paper, which states —

> Page 58, line 14 — To insert after "application" —
>
> (other than an application covered by section 86A)

That new clause was not passed, so I do not need to worry about that amendment. I move the next amendment —

> Page 58, after line 15 — To insert —
>
> (aa) the patient is ordinarily resident in Western Australia; or

(ab) the patient is not ordinarily resident in Western Australia; or

I have made this clear before. The only eligibility requirement is that for the last 12 months the patient has been resident in Western Australia. I think we need to raise the bar and have the same eligibility criteria as applies in Victoria. I will not take the matter to a vote, however.

Amendment put and negatived.

Clause put and passed.

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

Mr P.A. KATSAMBANIS: I want to focus on clause 88(1). I am not questioning the intent; I am questioning whether the wording of paragraph (d) works in all cases, and I seek the minister's assistance in this. I will go through it carefully, and I hope I make my concern very clear. It is really a concern about whether the language in paragraph (d) works in all circumstances envisaged. Clause 88(1) indicates that if the tribunal finds (a), (c) or (e) in clause 87—that is, the tribunal finds that the person is ordinarily resident in Western Australia for a period of 12 months or it finds that the patient had decision-making capacity in relation to voluntary assisted dying or the patient was acting voluntarily or without coercion—basically, the tribunal gives a tick. Then clause 85 ceases to apply, and if the request for an assessment process in respect of the patient has not been completed, the process can be resumed—and if the process had been completed, as in clause 88(1)(c), the process under part 4 can be resumed and any steps that is authorised under that part can be taken in relation to the patient. All that is fine and good, and I understand that intent. Then, paragraph (d) states —

if the Tribunal sets aside the reviewed decision — subsection (2), (3) or (4) applies, as the case requires.

What concerns me is the language "sets aside", because, according to clause 82 —

reviewed decision, in relation to a review application, means the decision the subject of the application.

If this application to the tribunal is about finding that the patient has capacity, we have the tick. The finding can be for either clause 87(a), (c) or (e), but I will use capacity. If the application is made by a patient against a decision by a practitioner that the patient does not have capacity—the patient comes and says they went to a doctor, coordinating doctor, a second doctor or whatever, who found that they did not have capacity but the patient insists that they do—and it is proven to the tribunal, the decision that is the subject of the application is the decision that the patient does not have capacity. The decision that is the subject of the review is the decision that they do not have capacity. The tribunal finds that the patient does have capacity under clause 87(c), so it ticks clause 88(1)(a), (b) or (c) in that respect. But the decision made by the tribunal is to set aside the original decision. I do not want to verbal people, but I think the advisers at the table understand where I am coming from. The actual decision the tribunal makes is to set aside the decision of the practitioner. We are caught in a vicious circle by the wording of paragraph (d). It seems to be drafted on the basis that all decisions will be decisions in which a practitioner has already found that someone has residency, or capacity, or has acted voluntarily or without coercion. The only set-aside decision envisaged is to reverse that. It could be either/or because either/or matters will be allowed to go to the tribunal, including from the patient themselves. I am not sure whether I made it clear. I am happy to continue for a moment.

Mrs A.K. HAYDEN: I would like to hear more from the member for Hillarys.

Mr P.A. KATSAMBANIS: I am not questioning the intent in any way. I think a gap has been missed in the drafting. I am raising it because, despite the fact that I philosophically do not support the concept of legislation that canvasses how to take someone's life, if this bill is to be passed, I want it to be as safe and secure as possible. I am concerned that clause 88(1)(d) is drafted in a way that will not achieve that.

Mr R.H. COOK: Subclause (d) is conditional upon meeting the requirements of subclauses (a), (b) and (c). If, for instance, in the case the member raised, the coordinating practitioner said that the person did not have decision-making capacity, that is the decision that will be reviewed. Ultimately, if the tribunal believes that person does have decision-making capacity, that review will be set aside and subclause (d) will come into play and take the process to the next step. Subclause (4) will only be activated if the decision is set aside. If it is not, the patient will be told that the tribunal agrees with the coordinating practitioner. I am advised that clause 89 will then come into effect.

Mr P.A. KATSAMBANIS: I am not prepared to accept that that is the case. I know that we cannot always do these things on the run. Perhaps the minister might undertake to at least have a look at this between the houses. As I said, if an application is made questioning a finding that the person has capacity, has residence, and has acted voluntarily and without coercion, that will be the case. The decision will be to affirm the original decision. However, if the application is couched in negative terms and the decision being reviewed is one that they did not have capacity or did not have residency, but the patient or a friend of the patient comes to the tribunal and proves that they did have residency or capacity, in order to make a finding that they have capacity the tribunal must first make a finding to set aside the original decision that they did not have capacity and substitute a finding that they have capacity.

Subclause (d) will be enlivened irrespective. In practice, I do not think anyone is going to try to circumvent this. It is just a really sloppy drafting by using the term "set aside". I am not trying to be difficult. I think this is a misunderstanding of the broadness of the decision-making power available to the tribunal and the either/or capacity for aggrieved people to bring an application under this part. That is what has caused this. I raise it in good faith. I do not want to be obstructionist. All that I think needs to be done is for it to be tidied up. I can make some suggestions. I do not really want to do that at this stage, but I can do that for the minister outside if he likes.

Mr R.H. COOK: Perhaps we can take the discussion offline. We respectfully disagree with the member's interpretation of it, so let us dig into that a bit more. As I said in a previous discussion, these clauses were crafted with the assistance of the tribunal to make sure that they are consistent with its processes, so I appreciate that the member might find the language unusual or unhelpful. Obviously, we want to be consistent with the way in which the tribunal operates. I take the member's interpretation of it in good faith. Our interpretation is different, so let us have that conversation.

Clause put and passed.

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

Mrs A.K. HAYDEN: Clause 89(a) states —

> the patient is taken to be ineligible for access to voluntary assisted dying for the purposes of the request and assessment process in respect of the patient; …

What happens if a patient is found to be ineligible to access voluntary assisted dying? Can the patient reapply?

Mr R.H. COOK: If a decision is made by the tribunal in line with any of the three conditions—that is, they had not been ordinarily resident et cetera, the patient does not have decision-making capacity, or the patient is not acting voluntarily and without coercion—then the patient is ineligible for access to voluntary assisted dying. The process, at whatever stage it is at, will come to an end; that is, no further action will be taken in the voluntary assisted dying process. A person will not be excluded from reapplying for access to voluntary assisted dying if the person was previously found to be ineligible for access to voluntary assisted dying due to a decision of a tribunal. This is because a person may, at a later stage, satisfy the eligibility criteria.

Mrs A.K. HAYDEN: I thank the minister. I understand that a person may not be eligible for a certain reason, such as that they have not been in the country for 12 months, but once the 12 months passes, they will be able to reapply. What if they have been disqualified for another reason, such as for being coerced, because they were not acting voluntarily, or for a more serious matter? Will they be able to keep reapplying? Is there a limit? It will be a waste of the tribunal's time if it has to keep coming back with the same answer once, twice or three times. How many times will a patient be able to apply if they keep getting knocked back for the same reason?

Mr R.H. COOK: I want the member to bear in mind that this is someone who will be making an end-of-life choice. This will be someone who is extremely frail and is coming to the end of their life. Ultimately, their circumstances may change. In crafting the laws, we have to contemplate that that may happen. We do not see this as being a scenario that will repeat itself very often. The person has the right. If they believe they are now much more lucid than they were and that they now have decision-making capacity, they may wish to make an application. They may reflect on the fact that maybe they were a bit coerced before, but they have had time to reflect on it and are now convinced that this is something that they want. We have to contemplate that that may happen.

Clause put and passed.

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

Mrs A.K. HAYDEN: Clause 90(2) states —

> A coordinating practitioner who refuses under subsection (1) to continue to perform the role of coordinating practitioner must transfer the role of coordinating practitioner in accordance with section 155.

What happens if the coordinating practitioner does not want to take on that transfer?

Mr R.H. COOK: If a tribunal has made a decision contrary to the decision or review decision that a coordinating practitioner has made, that coordinating practitioner may decide that they are not comfortable continuing with the process and that they had better bow out. However, that coordinating practitioner will have a duty of care to then hand that patient on to another coordinating practitioner, which, as the member observed, is facilitated for under clause 155. They cannot just leave the patient and say, "I've had jack of this"; they have an obligation to transfer the role.

Mr P.A. KATSAMBANIS: I want to know how this would work in conjunction with clause 89. I understand that clause 90 is drafted in that either/or fashion so if a practitioner makes a decision that a person does not have capacity and that goes to the tribunal and it finds they have capacity, the practitioner would feel uncomfortable,

but the tribunal would have said, "Carry on here; off you go." Why would a coordinating practitioner need to make any decision if the tribunal found that, irrespective of the coordinating practitioner's view, the patient did not have capacity? In that case the application would cease, or is this simply limited to those determinations in which the coordinating practitioner is effectively told, "You got it wrong but this must continue", not "You got it wrong and this ceases"; is that right?

Mr R.H. COOK: That is right. The tribunal can make a decision that the coordinating practitioner has got it wrong around any of those issues; that is, if a coordinating practitioner decides that a patient is not eligible, the patient appeals and the tribunal finds that they were. The coordinating practitioner might find that of comfort and think, "Good. Other people have had a look at this and they are of the same view. I wasn't sure so I responded in the negative, but now a tribunal is backing that decision." I would certainly understand that clause 90 could be utilised by someone who feels a bit aggrieved with the tribunal disagreeing with them. The observation is made that the relationship between the practitioner and the patient may have been affected in a negative way. It might be that the patient says, "Okay, I am not feeling too confident about staying with you." Again, the coordinating practitioner must transfer their role.

Mr P.A. KATSAMBANIS: If clause 89 applies, then clause 90 has no real effect; is that correct?

Mr R.H. COOK: Yes.

Mrs A.K. HAYDEN: Before the member for Hillarys jumps to his feet, I have a follow-up question. We have just said that the coordinating practitioner must transfer the role to another coordinating practitioner if he refuses to continue after the tribunal has overruled the position. What happens in a regional area where there is only one other coordinating practitioner and that practitioner refuses to take the transfer? Where does that patient end up and where does the original coordinating practitioner end up? The bill says that the practitioner must transfer the role. What happens in an area where there may not be another accepting coordinating practitioner willing to take on the transfer?

Mr R.H. COOK: The process is set out in clause 155. The coordinating practitioner has to transfer the role of coordinating practitioner to another medical practitioner who could be coordinating practitioner; it does not have to be a coordinating practitioner. It might be the consulting practitioner who is already involved in the process or has expressed a view that they are prepared to be involved. My friends in the Nationals WA said this poses an element of burden on the health department to put in a regime in which people in regional communities are not unnecessarily disadvantaged. That will be a burden on the department, but it is appropriate.

Clause put and passed.

Clause 91: Constitution and membership of Tribunal —

Mr P.A. KATSAMBANIS: Clause 91 is about the constitution and membership of the tribunal. It gives the terms "judicial member", "non-judicial member" and "public sector employee", exactly the same definitions as are included in the State Administrative Tribunal Act 2004. That makes sense. I welcome the Premier to the table in place of the Minister for Health!

Mr M. McGowan: Good evening—happy to be here!

Mr P.A. KATSAMBANIS: I am sure the Premier is! We are too!

Subclause (1) is completely uncontroversial. Subclause (2) indicates that the tribunal, when exercising its review jurisdiction "must be constituted by, or so as to include, a judicial member". That makes sense. That is uncontroversial. It must be a judicial member. Subclause (2)(b) states —

> a person who is a public sector employee may be appointed to be a non-judicial member in respect of matters in the Tribunal's review jurisdiction.

I have three questions about that. The first question is: what sort of public sector employee is envisaged to be so co-opted onto the tribunal? The second question is: given that it is a "may", in what circumstances is it envisaged that they be co-opted and in what circumstances is it envisaged that they will not be co-opted and there would be only a judicial member? The third question is: does the drafting of this clause allow for more than one public sector employee to be brought on to constitute the tribunal if the circumstances of the case require the specific expertise of two rather than one public sector employees?

Mr M. McGOWAN: Clause 91(2)(b) was recommended by the president of the State Administrative Tribunal for insertion into the bill. It modifies the operation of section 117(5) of the State Administrative Tribunal Act 2004 to enable psychiatrists, psychologists and other persons with the relevant skills and training who are public sector employees to be appointed as sessional members to sit on a panel on a review under part 5.

Mr P.A. KATSAMBANIS: Who will make the determination that those people are to be appointed? Is it the tribunal itself?

Mr M. McGowan: It is the president of SAT.

Mr P.A. KATSAMBANIS: Will the president of SAT draw from a list provided to him or her by someone within the public sector or will the president simply have to go out and ferret? If a list is provided, who will provide that list?

Mr M. McGOWAN: There are existing and sessional members. As I recall, we often appoint people from these lists to be available for SAT hearings, whatever nature they may be, and they can draw on those people.

Mr P.A. KATSAMBANIS: It is intended that people will be selected from the sessional members who have been appointed over time. If the government decides that more need to be appointed, I am sure they will be. They are sessional members; they are not permanent members of the tribunal. I am comfortable with that.

Can there be circumstances in which more than one person is co-opted onto a tribunal panel for the hearing of one matter or is it envisaged that there will be one sole judicial officer and, when the case requires, just one public sector employee?

Mr M. McGOWAN: As the member identified, they are sessional or other members as identified by the president of SAT. It is up to the State Administrative Tribunal to co-opt people in accordance with section 11 of the State Administrative Tribunal Act. I understand that the president of SAT does this regularly.

Mrs L.M. HARVEY: I seek a little clarification on this clause. Clause 91(1) states —

> In this section —
>
> ***judicial member, non-judicial member*** and ***public sector employee*** have the meanings given in the *State Administrative Tribunal Act 2004* section 3(1).

I went to the SAT act to look up the definitions. There is a definition of "judicial member", which means the president or a deputy president. Will there be a president or deputy president of this tribunal?

Mr M. McGOWAN: A president and deputy president of SAT are already appointed.

Mrs L.M. HARVEY: The definition of "non-judicial member" means a member who is not the president, a deputy president or an ex officio member. Can the Premier give me some examples of who those non-judicial members may be?

Mr M. McGOWAN: I outlined some earlier. It may be a psychiatrist, a psychologist, a lawyer or someone of that nature.

Mrs L.M. HARVEY: I may have missed something. The next definition was "public sector employee", which under the State Administrative Tribunal Act is a person employed under section 3(1) of the Public Sector Management Act. I went to the Public Sector Management Act, which does not contain a definition of "public sector employee". There is a definition of "employee", which means somebody employed in the public sector by or under an employing authority. The definition of the "public sector" means all the agencies and the ministerial offices and the non-SES organisations. We need some advice from the Premier because it is pretty much a catch-all that any public sector employee could be co-opted onto this tribunal. We need to have a bit of an understanding; will it be an employee with regard to this definition of a ministerial officer, for example, who will be co-opted onto this tribunal? Who is it likely to be, which agency are they likely to come from, and what level would it be likely that they would be employed at within those agencies?

Mr M. McGOWAN: The clause is essentially removing any doubt in saying that a public sector employee is able to be allocated or inserted into the tribunal and the person is selected by the president of the State Administrative Tribunal, which is standard.

Mrs L.M. HARVEY: I have an understanding of who could be on the tribunal—the president or the deputy president of the State Administrative Tribunal, a non-judicial member, which could be a psychologist or a psychiatrist operating in private practice or under a public sector award, and it could be other members of the public sector from any agency.

Mr M. McGOWAN: The SAT will make the decision based upon the skills and needs of the matter that is being reviewed. On occasion, it might be a WA police officer or a social worker who can analyse the matters before it.

Dr D.J. HONEY: I assume this would be the case, but to clarify, in these circumstances will the SAT have the opportunity to also seek advice from, for example, an expert panel? If this was a specific medical issue that one consultant or person on the tribunal would not necessarily be able to answer to, could they seek other advice as they see fit and use that as input into its decision?

Mr M. McGOWAN: Yes, they could.

Clause put and passed.

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

Mrs A.K. HAYDEN: This is just a quick question, Premier. Clause 92, "Hearings of Tribunal to be held in private", states —

> (1) Hearings of the Tribunal in respect of a review application must be held in private.

Could the Premier answer why it is necessary to have that in the legislation? The clause continues —

> (2) The Tribunal may give directions as to persons who may be present at a hearing in respect of a review application.

Will family members be able to be present at the hearing?

Mr M. McGOWAN: This clause requires tribunal hearings held pursuant to this legislation to be held in private. The tribunal may give directions about who may be present at a hearing. It could be a family member if the SAT president says that that is appropriate. Hearings on voluntary assisted dying should not be made public to ensure that the patient is protected and supported as they go through the voluntary assisted dying process, which I think is fairly self-explanatory.

Mrs A.K. HAYDEN: Is it in the Victorian legislation that it must be held in private?

Mr M. McGOWAN: The advice I have is yes. I think it is pretty clear why it should be held in private. I would have thought that was pretty straightforward.

Ms M.M. QUIRK: I suspect the answer is yes. Given the state of the applicant's health, there may be situations in which the tribunal needs to convene offsite. Will that be possible?

Mr M. McGOWAN: Yes.

Clause put and passed.

Clause 93: Notice requirements —

Mr P.A. KATSAMBANIS: The tribunal has requirements to give notice to the coordinating practitioner, the consulting practitioner, the administrative practitioner if there is one, the CEO and the board. It strikes me that the notice provision is slightly different from the notice provisions contained in the other parts of the bill that we have gone through already where it is quite prescriptive. In most cases, it is within two days. Why is not a prescriptive period included? What would be considered an appropriate time for the tribunal to give notice, particularly given the point the member for Girrawheen made in her latest contribution when she indicated that we are often dealing with someone who is at the very late stages of life?

Mr M. McGOWAN: The two-day requirement is for the board, which is established under this legislation. It is different because it would be inappropriate to impose such an obligation on a tribunal, which is a judicial body.

Clause put and passed.

Clause 94: Coordinating practitioner to give Tribunal relevant material —

Mr Z.R.F. KIRKUP: Clause 94(b) states —

> If the coordinating practitioner is not the decision-maker for the purposes of the *State Administrative Tribunal Act 2004*, provide to the Tribunal documents and material in the practitioner's possession …

As part of that process, is it envisaged that the coordinating practitioner would be present for the hearing or will they simply supply all relevant material, but not have to speak to it?

Mr M. McGOWAN: It is a decision for the State Administrative Tribunal whether they call the person.

Mr Z.R.F. KIRKUP: Would the practitioner be compelled to attend?

Mr M. McGOWAN: They can be.

Ms M.M. QUIRK: There are procedures obviously in the State Administrative Tribunal Act, but given there is a presumption of capacity in this legislation, what burden will be placed on SAT when it inquires into those facts? In other words, to understand that the eligibility criteria is met in the context of capacity, what is the burden of proof? Is it similar to, for example, guardianship applications?

Mr M. McGOWAN: The tribunal needs to make a decision based upon the evidence presented by the parties to the proceedings. The State Administrative Tribunal was selected for this role because it has dealt with these kind of matters more broadly since 2004.

Ms M.M. QUIRK: I know that this is a complex issue, because the legislation has not yet commenced operation. There is a presumption that an applicant has capacity. Will that presumption carry through to the SAT, or will

the SAT have to do what it does in guardianship applications, for example, and decide that there are cogent and compelling reasons that the person is, in fact, capable?

Mr M. McGOWAN: There is a rebuttable presumption that the individual in question has decision-making capacity. The SAT can presume that the individual has decision-making capacity unless shown otherwise based upon evidence.

Clause put and passed.

Clause 95: Tribunal to give written reasons for decision —

Mr P.A. KATSAMBANIS: Clause 95 is simple. The tribunal needs to give written reasons for its decision—that makes sense. I want to clarify, because, again, timeliness could be a real factor here. Is there capacity for the tribunal to make a verbal decision —

Mr M. McGowan: Yes.

Mr P.A. KATSAMBANIS: — at the time of the hearing or afterwards and then communicate written reasons afterwards? In those cases, how would that work with the notification requirements in the previous clauses that we have already discussed? Will the tribunal be required to communicate both the verbal decision and the written decision? How will it work in those cases?

Mr M. McGOWAN: Yes, there can be an oral decision handed down and followed up with a written decision after that point in time. A written transcript of the part of the proceedings in which the tribunal's reasons for decision were given orally may constitute written reasons for the purpose of this clause.

Mr P.A. KATSAMBANIS: I point out that even that written transcript might be something that people do not want to wait long for. I am glad the minister has clarified that the tribunal can give oral reasons first. I think that is helpful.

Mrs L.M. HARVEY: Just to clarify, if an oral decision has been made, does it need to be converted into a transcript before it can be enacted or can it be enacted on the basis of what was said? Obviously, a transcript takes time to be produced.

Mr M. McGOWAN: It is based upon the handing down of the decision, so the words of the decision, whether oral or written.

Mr A. KRSTICEVIC: With regard to the decision, the Premier talked about the oral and the written decision. Is there a difference in the level of detail that would be given to the person based on an oral decision as opposed to a written decision? If there is a difference in the detail, what would it be?

Mr M. McGOWAN: It is on a case-by-case basis and the decision of the State Administrative Tribunal. Often the oral decision is transcribed—sometimes immediately, sometimes afterwards—but the decision can be either oral or written, based upon the circumstances.

Mr A. KRSTICEVIC: Is the Premier saying that the written decision would be exactly the same, word-for-word, as the oral decision, or would there be variations in how the information was presented in each case?

Mr M. McGOWAN: In some cases, yes; in other cases, no. All proceedings before the SAT are recorded, so there are transcripts of them. The written decision may well be a transcript of the oral judgement, if you like, or it may be more fulsome. It depends upon the circumstances of the case and its complexity. The presiding officer may well decide on the complexity of what they hand down in writing, based on those circumstances.

Mr A. KRSTICEVIC: The Premier indicated that the written decision may be more fulsome than the oral decision. Can the Premier give me a rationale behind how that would occur? If there is more fulsome information that needs to be given in the written decision, how do we know that the person receiving the oral advice understands completely and exactly what the decision is and the parameters within that decision, if there is ultimately more information going into the written aspect of it?

Mr M. McGOWAN: It is one decision that it makes. Whether it is more extensive in writing than the oral decision or otherwise, it does not change the essence of the decision.

Ms M.M. QUIRK: I know time is of the essence in these matters; I am afraid I was distracted by someone. Is there any reason why there is no time frame within which the SAT has to provide reasons, given the desire for it to be dealt with expeditiously?

Mr M. McGOWAN: Under the State Administrative Tribunal Act, it is a matter for SAT as to when it provides written reasons. Because we have empowered SAT with this responsibility, the SAT act applies.

Mr A. KRSTICEVIC: Clause 95(2)(b) provides that if the coordinating practitioner for the patient is not a party to the proceeding, they also need to get a copy of the written reasons. How soon will it be before they get that advice? I am concerned about the fact that I am not sure what the time frames are. Can the Premier tell me how

long it would take? I know the Premier said that SAT has its own procedures, but we know that there are time frames stipulated in this legislation. We just want to make sure that all the information is available to all the people within the stipulated time frames. How will they be given that information?

Mr M. McGOWAN: SAT members will make a determination based upon the circumstances and obviously in these circumstances they would expedite it. They are not silly people; they understand the seriousness of what they are dealing with. They can provide the information in writing either by hand, email or delivery of a letter.

Mr A. KRSTICEVIC: That information can be provided however they see fit. Is there a requirement for them to follow up to make sure that people have received that information? We know that things can get lost in the mail and that emails can get lost through technology. There is no guarantee that people have received the advice. I know that, in the normal course of events, a person is deemed to have received something if it has been mailed to them—for example, an electricity bill or something like that. However, this is not the normal course of events. How will we know that the decision has been conveyed and that they have received that decision?

Mr M. McGOWAN: There are common methods of communication and there is case law around these things. I would expect that, in these circumstances, the parties on all sides would follow up pretty swiftly if they were awaiting the information.

Mr A. KRSTICEVIC: That goes to the heart of the second part of my statement. I know that in the normal course of events, there are conventions that can be relied upon. But we are talking about someone terminating or ending their life. Obviously, it will be the most important decision that someone will ever make in their life; likewise, it will be the most important decision that the coordinating practitioner will be involved in. I do not think that we can say that in the normal course of events, these things just happen and it will work itself out. At the end of the day, communication can be lost or corrupted electronically in some way, shape or form, or it could be lost in translation. We want to make sure that the parties receive the response and the reasons within the required time and that there is no potential for the information to be lost. I want to make sure that we are confident that people will get this information and it will not just be a matter of convention, laws or regulations that will make this happen. There should be some checks and balances in this case.

Mr M. McGOWAN: SAT sits every day and hands down decisions every day, and it communicates those decisions via all sorts of means. The person awaiting the decision would no doubt pick up the phone if an email or a letter had not arrived.

Clause put and passed.

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

Mr P.A. KATSAMBANIS: Clause 96 provides that if the tribunal publishes a decision or the reasons for its decision, it will depersonalise that decision so that parties to the proceedings, people who appeared before the tribunal, the coordinating practitioner, the consulting practitioner and the administering practitioner are not identified. There is nothing new in that. Tribunals across the nation do that on a pretty regular basis. It is pretty rare for things to slip through in the publication by the tribunal. Clause 96(1) is very good and very simple. It is well understood in tribunal practice. I do not think there is anything controversial in that whatsoever. I also think it is fair. These are very personal proceedings and the identity of the parties ought to remain private in the same way as the identity of parties in the Children's Court, the Family Court or many other proceedings in our court system remain private. However, subclause (2) provides an exception to that, and that is when the tribunal provides the decision to the parties. The decision it gives to the parties, the board and the CEO will identify all the people. Again, that makes sense because if the tribunal gave a depersonalised decision to the board, the board would not know whom to apply it to. However, what is not included is a sanction against any individual who receives that decision under the tribunal's powers under clause 96(2) and then chooses to communicate it. Perhaps an aggrieved party will bring an action saying that their friend, parent or partner does not have capacity. What sanction would be available against those people if they chose, erroneously and unfairly, I would say, to make public the decision that person had made in good faith—a decision they deserve to be given the opportunity to make—and in some way brought those people who were party to the proceedings into the public limelight, against the intent of this legislation?

Mr M. McGOWAN: There is an offence provision for exactly that circumstance in clause 106, which we will be at soon, hopefully.

Mrs L.M. HARVEY: Premier, the explanatory memorandum says that clause 95 —

> … modifies the operation of sections 75, 77, 78 and 79 of the State Administrative Tribunal Act …

Mr M. McGOWAN: We are dealing with clause 96.

Clause put and passed.

Clause 97: Interim orders —

Ms M.M. QUIRK: Premier, what interim orders are contemplated under this clause?

Mr M. McGOWAN: I thank the member for the question. It is a good question. It is difficult to define, but a couple of examples are an interim order by the tribunal may be an order for more information or an order for a capacity assessment of the individual seeking the decision.

Ms M.M. QUIRK: Thank you very much, Premier. What other circumstances are contemplated under clause 94, which we have passed, in which the coordinating practitioner must give the tribunal relevant material? It does not seem to be an offence if he or she does not do so. I went to the State Administrative Tribunal Act thinking that there may be a relevant offence there. It is not failure to comply with a decision. It is not failure to comply with a summons, because there is no summons issue. I am not sure that it is failing to give evidence as required. It is the opposite of giving false or misleading information; it is not giving any information at all. It might be obstruction, or it could be contempt. If it is contempt, it seems to me that the SAT would probably want to make an order to that coordinating practitioner first to say that it will give them the opportunity to hand over the material before it took the next step of finding contempt.

Mr M. McGOWAN: I think the member's question is: what if a coordinating practitioner does not provide information in accordance with an order of the State Administrative Tribunal—is that it?

Ms M.M. Quirk: Yes; there does not seem to be any sanction in there.

Mr M. McGOWAN: In my understanding, professional misconduct and other matters are involved in that, and they are also breaching an order of SAT, which may well be an offence under the SAT act.

Mr P.A. KATSAMBANIS: I know that the tribunal has the power to order the production of documents or other important information. It has the power to order people to appear before it, in certain circumstances, by summons or other means. There would not be a need for an interim order in those cases. An interim order is made to prevent something from happening until a final decision is made. As I understand it, under these provisions in part 5, when an application is made, things are stayed; there is no continuation. In those circumstances, I think we are all struggling to come up with reasons why an interim order power would be needed. If the answer is that this provision is in the legislation solely to cover off for completely unintended consequences that we are not quite sure about, I think that is a good thing. However, if something was particularly in the contemplation of the drafters or the people who recommended this methodology, I think it would be worthwhile just having it on the record. As I said, that might not be the case. It might simply be a catch-all just in case. I seek further clarity from the Premier as minister at the table.

Mr M. McGOWAN: The provision was requested by SAT during the consultation process, so we have inserted it at its request. Examples I gave before might include, as the member said, holding proceedings while more information is being sought, while it refers someone for capacity assessment, or it might want to seek some advice about whether someone is engaging in coercion. It could be any number of matters, but this gives the tribunal extra authority, in effect, to properly assess the matter.

Mr Z.R.F. KIRKUP: In some questions that I asked the minister earlier about interim orders and who might be tasked with some investigative powers, such as the police or people like that, if there is a concern, to look into a matter further as part of an interim order, could this clause enable further investigative agencies to look into certain areas of concern as well?

Mr M. McGowan: Yes.

Clause put and passed.

Clause 98: Unauthorised administration of prescribed substance —

Dr D.J. HONEY: I seek the Premier's indulgence, and some advice from his advisers. In clause 19(4)(b) there is a requirement that if a practitioner is approached by someone who wishes to access the voluntary assisted dying process, and the practitioner refuses, they have to submit a form within two days providing details to the patient and explaining why they did not wish to participate in the process. However, clause 19(4)(b) requires them to provide a form prescribed by the CEO. I understand that there was a penalty for that, but, in this offences part, I could not find a penalty for that, so I am seeking advice from the Premier or his advisers.

Mr M. McGowan: It is in clause 107. We will deal with that shortly.

Dr D.J. HONEY: That is failure to give a form to the board, but this offence is failure to give a form to a person seeking access to the process. I appreciate the doctor submitting the form to the board, saying why they do not wish to participate in the process and giving the patient details. This is genuine; it is not a trick question. There is a requirement. The doctor has to give the patient a form —

Mr M. McGowan: Clause 10.

The ACTING SPEAKER (Ms S.E. Winton): Member for Cottesloe, do you have a question on clause 98?

Dr D.J. HONEY: I just want some indulgence, please, to look at that. It is simply professional misconduct. I do not know where else to ask this question. Is the Premier saying that that is the only clause that applies if a doctor does not give the patient the form prescribed by the CEO?

Mr M. McGowan: That is the area in which there is a consequence for a health practitioner not providing a form.

Mr Z.R.F. KIRKUP: I refer to clause 98(a), which states —

> A person commits a crime if —
>
> (a) the person administers a prescribed substance to another person; …

I am assuming that, as part of this, some level of understanding has to be reached that the person intended to administer that. I am trying to imagine a scenario in which a person who might be terminally ill asks their spouse to pour a liquid down their throat or something like that. Would that be captured by this clause? It is not inconceivable that that would occur. In that case, would that person be possibly subject to imprisonment for life?

Mr M. McGOWAN: The only two people who will be authorised under the act to administer the substance are the practitioner authorised under the act or the individual themselves. Therefore, this clause would apply to anyone else who did it.

Mr Z.R.F. KIRKUP: Thank you, Premier. I am not legally minded, but I assume that it could be a defence that the person did not know that they were providing the prescribed substance or something like that.

Mr M. McGowan: That would be the normal defences under the current Criminal Code.

Mr Z.R.F. KIRKUP: I appreciate the Premier's background here. I refer to someone who is under 18 years of age. What would that mean? If a child is seen to be doing it, would they still be bound by the life imprisonment possibility?

Mr M. McGOWAN: The age of criminal responsibility is 10 years old.

Mr P.A. KATSAMBANIS: I refer to clause 98. If someone were to administer a prescribed substance to another person without authorisation to do so under this legislation, that would be murder if it led to death, and it would be attempted murder if the administration did not lead to death. That would be the prima facie crime committed. Of course, the mental elements and everything else would need to be made out, but that would be the prima facie case, so why would we need this provision? Why would we not simply rely on what we already have in the Criminal Code?

Mr M. McGOWAN: It is a precautionary provision to ensure that there can be no doubt and is specific to the substance that is provided for the administration of voluntary assisted dying. The bill criminalises conduct that could occur as a result of the bill. These offences apply only to the circumstances relating directly to voluntary assisted dying. Any action or inaction that does not occur under the bill and does not involve a voluntary assisted dying substance will continue to be governed by existing criminal laws. I think it is to provide clarity in relation to the substance and will ensure that only the individual themselves or the practitioner authorised under the legislation can administer the substance.

Mr P.A. KATSAMBANIS: I understand the theory behind it, but even if that were the case and even if we wanted to create a separate and unique offence, as opposed to the ordinary Criminal Code offences, why would we not incorporate this offence into the Criminal Code, given we are making consequential amendments to other acts? Why would we leave it as a standalone provision in the Voluntary Assisted Dying Bill? For terms of life imprisonment, we would expect the Criminal Code to be the first place one would go. Why would we leave the offence solely in this legislation and not incorporate it into what is meant to be the first port of call for all serious criminal offences in Western Australia? To just round that off, this clause looks at circumstances in which someone has either got their hands on the prescribed substance in a nefarious manner or is perhaps ideologically bent on doing this—the tribunal hearings and everything else happened and they were told not to do it but they did not stop. We are looking at cases right out on the margin anyway, so it is not going to be an everyday or common event. On the other hand, if someone wanted to do ill to someone, I am sure they could probably find a way to obtain and then mix up a whole series of other substances that might not be the prescribed substance but could do the same thing. If they do that and they administer it, they will be subject to the Criminal Code. I do not have a problem with the intent of this clause, but just for the rounding off of our Criminal Code, why are we not putting this offence in there?

Mr M. McGOWAN: To be fair, I think this actually toughens the bill in a way that I would have thought the member would agree with. It makes it absolutely clear that if a person other than the individual who is seeking voluntary assisted dying or an authorised person, who will be a practitioner, administers the substance, they will be subject to the charge under clause 98. That is completely clear. Just so the member knows, a range of offence provisions are contained within the bill that are specific to the circumstances surrounding this bill. We are about to go through a number of them. It just makes it clear. There are other offences outside the Criminal Code for which life imprisonment is the punishment. One that has been brought to my attention is in the Misuse of Drugs Act.

Mr P.A. KATSAMBANIS: As I said, I do not think there is anything intrinsically wrong with having it here; it just strikes me as passing strange. I do not think it toughens the bill. The absence of this provision would not make the bill any weaker, let me put it that way. I think the intent is clear. If someone does not follow the procedure set out in this bill and injects someone with a substance, be it this or another substance, they will not be covered at all—it will be murder or attempted murder. We are not arguing about that. As I said, it is just something that I thought we could clarify and I thank the Premier for his explanation.

Ms M.M. QUIRK: My concerns about this clause go more to the issue of evidence and proving such an offence. We are looking at a number of scenarios. For example, we are looking at a medical practitioner who is authorised but does not follow clause 58(5) because he has formed the view that the patient does not have capacity, that the patient has been coerced or that the patient does not have an enduring intention. In those circumstances, that will not be readily apparent to anyone who investigates the matter because the death certificate will just say "Died of cancer" and the witness may or may not be competent to give evidence on the fact that this offence was committed. Because the board does not have contemporaneous oversight, I am really at a bit of a loss about how such an offence could be proved. I also want to ask: given that it is under this bill, will the CEO of the Department of Health have some responsibility for investigating?

Mr M. McGOWAN: The police will be authorised to investigate. When the state of mind of the accused is under any doubt or in question and when they do these things, they consider all the surrounding circumstances. Although I appreciate the member's argument, the same could be said of any prosecution or investigation of any alleged criminal act.

Ms M.M. QUIRK: That is the very argument that certain doctors have been advancing for why we need this legislation. They have been saying that it is not clear, and that they are in jeopardy of legal sanctions or criminal liability because the objective circumstances cannot be inferred, the victim is dead and so on. It is kind of ironic that the Premier has used the very same argument that the proponents of this legislation also use about the same proceeding. I will give the Premier an example. There is a death certificate that says the person has died of cancer. The person has been cremated. On the face of them, the board forms seem to be correctly filled in. Short of having the witness do something absolutely extraordinary, and probably uncorroborated, I am not sure how we would ever successfully find a prosecution for a medical practitioner who has exceeded his authority. I think it would be different under clause 98(a) when someone is not acting under this legislation. But, again, there are some problems there because it is a prescribed substance and that person may choose to use something other than a prescribed substance.

Mr M. McGOWAN: My only answer is that people die every day in all sorts of circumstances and if they are buried or cremated, that obviously influences any sort of investigation into their deaths. This would be no different from those situations that occur every day.

The ACTING SPEAKER: The members—sorry. Member for Hillarys.

Several members interjected.

The ACTING SPEAKER: Members!

Dr D.J. Honey interjected.

Mr P.A. KATSAMBANIS: Slightly—I was wondering what the redistribution had done to me!

The ACTING SPEAKER: I was seeing double!

Mr P.A. KATSAMBANIS: I have only visited the Kimberley a few times. It is a beautiful place. I probably need to visit it more!

The question that the member for Girrawheen asked gives rise to the sort of question we will grapple with in another bill in this Parliament about when events occurred. Again, we are dealing with real externalities. We are dealing with a one-off—I understand that—but it is a potentiality. We are not dealing with when it occurred, but how it occurred. If evidence comes to light afterwards that a person was administered a substance and they died and have been cremated or buried, and it is impossible at that stage to determine what type of substance was used, which offence would people be charged with? If it is impossible to deduce whether the substance used was the prescribed substance, a non-prescribed substance or even a combination of the two, and the accused person was not willing to admit either/or, would they be charged with murder or an offence under clause 98?

Mr M. McGOWAN: It is a decision for the Director of Public Prosecutions looking at all the circumstances. Obviously, the offences under clause 98 and murder are alternative offences and the office of the DPP can pick which one it wishes to charge the individual with.

Mr P.A. KATSAMBANIS: Would it be an offence—a defence, sorry; I am still thrown out by this "Kimberley" reference —

The ACTING SPEAKER: I do my best.

Mr P.A. KATSAMBANIS: That is all right.

Would it be a defence for an accused person if the prosecution could not prove what substance was used? If the accused was charged with murder, they could say that it could not be proven that a prescribed substance was not used, and therefore they should not be charged with murder; they should be charged with an offence under clause 98. Would it be a genuine either/or and it simply would not matter which of the two charges were preferred and all the prosecution would need to prove was that a substance was administered? I am just trying to get clarity on this matter, because we know from experience that these sorts of gaps in the law often result in perverse outcomes, and that is why we have that bill before us in the house. We have not debated it yet, so I am conscious of not foreshadowing debate on it. That is why we have it here; it is because these sorts of gaps or unforeseen circumstances sometimes lead to very perverse outcomes and people avoiding justice when they ought not to avoid it.

Mr P.A. KATSAMBANIS: I regard the Office of the Director of Public Prosecutions and its officers as very professional and knowledgeable about all these matters and they make decisions every day about which offences to charge someone with, particularly when it is a serious offence. The office of the DPP exercises this discretion based upon what gives the best chance of a conviction.

Ms M.M. QUIRK: I have looked at the Victorian legislation and I have looked at clause 98 of this bill, and I see what the issue is. The Victorian legislation is basically limited to those who have a permit to administer and in some way depart from the scope of that permit, but it also has the word "intention", which is not present in this legislation. It is broader than an authorised medical practitioner, and that is where we are getting into some lack of clarity. Frankly, that is more properly dealt with under the Criminal Code. Any person on the street can give anyone any substance that kills them, which is not a prescribed substance, and is not in any way conduct authorised under this legislation, the authority for which has been exceeded. If clause 98 were limited to people who had authorisation but in some way departed from it, that would be much clearer. Even using the words "knowingly" or "intended to" would, I think, make the clause much clearer. This almost looks like a strict liability offence, which of course it cannot be for a life sentence. I know there is no formal amendment before the house, but I find clause 98 very confusing and I suspect the Director of Public Prosecutions might not be happy with it either.

Mr M. McGOWAN: I think I answered the question to the best of my ability. It provides clarity and the opportunity for prosecution under this legislation with imprisonment for life, which I thought members who do not support the bill would have thought was a good clause.

Ms M.M. QUIRK: With all due respect, Madam Deputy Speaker, I will not flog a dead horse anymore —

The DEPUTY SPEAKER: Thank you.

Ms M.M. QUIRK: — but I will make the comment that for the very reason that it is imprisonment for life—the very reason there is this robust penalty—that means that the standard of proof is incredibly high. For the very reasons that the Premier mentioned, that is why we need a greater level of precision in the drafting.

Mr A. KRSTICEVIC: The clause states that the person administers a prescribed substance to another person. I just want the Premier to explain to me the word "administers". In what way, shape or form can a person, obviously other than the individual patient, administer the poison to the patient?

Mr M. McGOWAN: It would be injected, poured down their throat or put into their food.

Mr A. KRSTICEVIC: If, for example, a husband and wife are at home and the husband who is terminally ill has the medication and decides that the time has come and says to his wife, "I'd like you to make me that chicken soup that I like so much and I'd like you to put the poison in there. I'd like to eat my chicken soup and pass away", and she brings the chicken soup to him, puts it on the table and he eats it, is she in any way, shape or form involved in the administration of that poison?

Mr M. McGOWAN: In the case the member gave me, the husband has administered the medication.

Mr A. KRSTICEVIC: Taking that one step further, let us say the husband is too ill to lift the spoon to his mouth and ingest the soup and asks his wife to feed him the soup, and the wife feeds him the soup because he is not well enough, but he is meant to self-administer. Would the wife commit an offence if she feeds her husband and he passes away from that medication?

Mr M. McGOWAN: Yes.

Mr A. KRSTICEVIC: I refer to clause 98(b), which states "the person is not authorised by section 58(5)" if they do not follow those rules. Clause 58(5) refers to decision-making capacity and a range of other things. The administering practitioner is the one who is administering the poison, but family members present at the time of the administration may say to the practitioner, "We do not think they have decision-making capacity at this point" or, "They are not doing this voluntarily and you are coercing them", or, for whatever reason, some other accusation may be made by the people there. For example, someone's mother is going through this process but the children may not want the mother to go through this process and may be concerned about what is going on. Will the

administering practitioner be in trouble if two or three witnesses said, "Hold on, no, this was not done properly with decision-making capacity" or for some other reason? I ask that because I want to make sure the administering practitioner is safe in doing this if others who happen to be present disagree with that and it is later challenged.

Ms M.M. Quirk: They still need some evidence then.

Mr A. KRSTICEVIC: The evidence would be the witnesses.

Ms M.M. Quirk: The witnesses.

Mr A. KRSTICEVIC: That is right.

Ms M.M. Quirk interjected.

The DEPUTY SPEAKER: One at a time, please, members. The member on his feet has the call.

Mr A. KRSTICEVIC: When there are witnesses, I want to make sure that the administering practitioner would not be scared off because witnesses are there who are challenging this. Is it too late at that point, because the Premier said an individual can change their mind at any time? If an individual can change their mind but their circumstances change and they no longer have decision-making capacity and the witnesses around them think that, would that mean they could be contravening this legislation and end up with a sentence of life imprisonment?

Mr M. McGOWAN: Under clause 58(5) the administering practitioner needs to be satisfied that the patient at the time of administration has decision-making capacity, and is acting voluntarily and without coercion, and that the patient's request for access to voluntary assisted dying is enduring. That sets out the circumstances. Obviously, there is a range of circumstances surrounding the passing of any individual, but that is what the administering practitioner must be satisfied of.

The DEPUTY SPEAKER: Members, I think a lot of this has already been covered in previous clauses, so I urge you please not to repeat what has been covered.

Mr A. KRSTICEVIC: I am not aware —

The DEPUTY SPEAKER: I am sorry, member, but it will be in *Hansard*.

Mr A. KRSTICEVIC: This is a first-offence clause.

Mr S.K. L'Estrange: The minister has told us to refer to this section.

Mr A. KRSTICEVIC: That is right, previously.

The DEPUTY SPEAKER: I remember this discussion from earlier when I have been chairing. Go ahead, member, but I ask you not to be repetitious, please.

Mr A. KRSTICEVIC: I am not; I want to know —

The DEPUTY SPEAKER: Go ahead, go ahead.

Mr A. KRSTICEVIC: There is a penalty for life imprisonment.

The DEPUTY SPEAKER: Go ahead.

Mr A. KRSTICEVIC: I am not aware that we have dealt with offences or life imprisonment or any offences at this point in time.

The DEPUTY SPEAKER: Go ahead.

Mr A. KRSTICEVIC: We did not know it was in previous clauses, unless we referred back, looking forward.

An opposition member interjected.

The DEPUTY SPEAKER: One at a time, thank you.

Mr A. KRSTICEVIC: The administering practitioner is there, and those conditions have been met previously, and there is no question about that. However, three months or six months later, however long it is, because, as we know, medical practitioners get it wrong—we never know; a patient may live for another 12 months or two years—the patient may still have the medication sitting there ready to go. They have not made up their mind yet. They may live longer than six months. If someone is in that situation, and witnesses there say, "We don't think this person has decision-making capacity at this point in time", does that carry any credibility? Can the administering practitioner confidently say, "Bad luck, I don't really care what the five witnesses in the room think. All the boxes have been ticked; I'm administering this medication because the rules have been met, and I'm comfortable with that", or could they find themselves in trouble if suddenly these five witnesses say, "We'll take this to court, we'll charge you with murder, because you have contravened the legislation", or "We're going to charge you under this particular offence"? It is quite a simple question. If witnesses in the room at that time have a differing view from the administering practitioner, I want to make sure that the administering practitioner is protected in all cases. That

is what this question is about. We do not want them to be challenged afterwards, publicly and/or legally, that they have carried out an illegal activity.

Mr M. McGOWAN: As I said earlier, if the practitioner is not satisfied, they cannot administer. Obviously, the practitioner would no doubt take into account any commentary or the like by other people in making that decision, and whether members of the family, individuals present, or whoever it might be, were acting vexatiously, irrationally, or whatever the case might be. As I think we went through with clause 58(5), in all these circumstances, it is a decision for the practitioner, taking into account the circumstances outlined in that clause.

Mr A. KRSTICEVIC: The Premier says the practitioner would take that into account. I want to know, if there were, say, five witnesses in the room, close family members, saying, "No, we don't agree with you", can they try to start action against the practitioner under clause 98, saying, "Actually, no, we disagree with the practitioner"? Let us say, for example, of those five witnesses, two of them are general practitioners, a couple of them are lawyers, and they are sitting there —

Several members interjected.

Mr A. KRSTICEVIC: I hear people think it is a joke. I do not think it is a joke. I think it is quite a serious matter.

Ms A. Sanderson: You are not making any sense!

Mr A. KRSTICEVIC: That is okay; the member for Morley can keep intimidating people during this debate, as she has done quite comfortably for a time, trying to assert her authority, but it is not going to get her anywhere, because people know her game.

I just want to know very clearly that if these five people challenge the administering practitioner, the administering practitioner is safe; that challenge has no grounds or merit if the witnesses decide to pursue it. The Premier said, "As long as the administering practitioner is confident." Who will determine whether they were confident and whether the circumstances were met at the time it was happening? If those other five people decide to pursue it further, what defence does the administering practitioner have at that time, which could be two or three months after the process has been signed off and approved? Obviously, things change over time—within days, let alone months. It is really important to get this on the record so the administering practitioner knows, with confidence, that if they find themselves in that situation—they get challenged in that room and there are four or five witnesses in there—yes, they can administer the medication, and there will be no consequences at all. If these people decide to take legal action, go to court, or do whatever they want to do, the administering practitioner knows, "No, I am protected. I disagree with them; my decision is final, and they cannot challenge me at all." What defences are there for the administering practitioner?

Mr M. McGOWAN: Those are contained in clause 113, which we have not reached yet. If any individuals have any concerns, they can take the matter to the police. If the police believe there is any sort of case, they can investigate it, and, if they think it is worthy of prosecution, they can take it to the Director of Public Prosecutions.

Mr A. KRSTICEVIC: The Premier has indicated that there is the potential for them to go to the police and ask for an offence to be registered. If, as I said, four or five witnesses were saying, "No, there was no decision-making capacity at the time", or there was no acting voluntarily or there was coercion, or whatever the case might happen to be at that time, and the poor old administering practitioner is on their own on the other side saying, "No, that's not what happened", they would find themselves in a pretty precarious position. Who are the police going to believe—the five people who said it happened or the one practitioner who is saying something different? Is the Premier saying that it is now just subject to luck as to whether or not the administering practitioner is charged? I do not know that that in itself is enough of a safeguard for the administering practitioner. As I said, maybe there are safeguards that I am not aware of, but I would really like the Premier to tell me that it is not a matter of going to the police, and gathering evidence, and then the police deciding on the balance of probabilities what five against one have said and who is guilty and who is innocent. I want to make sure that the administering practitioner is in a safe position when they do this and will not find themselves reported on in the papers, accused of crimes that they may or may not have committed, and have to go through that process unnecessarily when there should be safeguards for them in that situation.

Mr M. McGOWAN: The patient will have gone through a range of assessments, as we know, prior to reaching this point, which is a safeguard. There is a range of defences under this legislation, as I outlined before, and under the Criminal Code. I might just say more broadly that any one of us can allege anything against any other individual at any point in time and take the matter to the police if we wish to. That happens every day. I could allege something against the member, if I want, and I could take him to the police, if I want. It would be up to the police and the authorities then to investigate. If a prosecution were to be launched after I had alleged something against the member—that he assaulted me, or defamed me, or engaged in criminal assault, or stole from me—it would be

a matter of whether or not there was a prima facie case and whether or not there was a prosecution in the circumstances. The prosecution would have to prove all the elements of the offence beyond reasonable doubt.

Ms M.M. QUIRK: I think part of the confusion is that this clause deals with both medical practitioners who may have exceeded their authorisation in administering the prescribed substance and other people who are not medical practitioners or who are outside the scope of this legislation. Perhaps before this legislation goes before the other place, may I respectfully suggest that some consideration be given to making these offences like a code of conduct covered by the scope and tenor of this legislation. An ordinary person who does not purport to act under this legislation and who administers a substance that has the ultimate effect of killing someone could be dealt with in the normal way under the Criminal Code. The other limiting factor, as I said, is that this creates an offence of administering only a prescribed substance. If it is a person who is outside the system altogether, there is no guarantee that what is administered is a prescribed substance. It might have the same effect as a prescribed substance, but it might be broader. In my respectful submission, there would be less confusion if part 6, "Offences", purported to be a code for matters under this legislation, and the more general offence of administering poison causing death were dealt with in the normal way under the Criminal Code.

Clause put and passed.

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

Mr P.A. KATSAMBANIS: There is nothing wrong with clause 99, "Inducing another person to request or access voluntary assisted dying"; I think that is a new offence because the legislation is new. Again, it does not make that much difference whether it is contained in the Criminal Code or in this bill. My first question about this is: why were the penalties in this clause chosen? The penalty is imprisonment for up to seven years and there is also a summary conviction penalty of imprisonment for three years and a fine of $36 000. It envisages that it is an either/or offence. The penalty at the top end is seven years' imprisonment. Why was that penalty chosen? What similar penalties in our criminal law were used as a guide for setting this penalty?

Mr M. McGOWAN: The drafting team met with the Department of Justice to discuss the appropriate penalties. The drafting team took advice from the Department of Justice and came up with this penalty based upon section 301 of the Criminal Code, which creates an offence of causing someone to take poison or other noxious things, and section 304 of the Criminal Code, which creates an offence if a person does any act as a result of which bodily harm is caused to any person or the life, health or safety of any person is or is likely to be endangered. It is a similar penalty regime. Sections 301 and 304 of the Criminal Code are similar offences. The team sought the advice of the Department of Justice, the Western Australia Police Force, the Solicitor-General and the Director of Public Prosecutions in landing upon this penalty.

Mr P.A. KATSAMBANIS: If an individual induces another person to request or access voluntary assisted dying—so, the person who accesses the assistance is not acting of their own free will—and that individual is intercepted prior to the substance being administered to the person, that is all well and good; the induced involuntary death will be avoided. However, if the inducing is discovered after the inevitable end of the process, and the result is the involuntary death of the patient, what other crimes can the inducing person, who could be subject to prosecution under clause 99, be considered for under either this legislation or the criminal law generally?

Mr M. McGOWAN: The circumstance is covered by clause 100, with imprisonment for life.

Mr P.A. KATSAMBANIS: I do not think it is completely covered by clause 100. It is arguable that clause 100 does not actually apply. Clause 100 would not apply to someone who has the substance administered by an administering practitioner, so the answer I received was, at the very least, incomplete. I would argue that clause 100 does not apply. The reason my question is relevant is that there is provision in this bill that indicates that a death under the provisions of this bill is not a suicide. If someone induces another person to undertake this process, the actual death under the process is not suicide. We cannot blame the practitioners involved; we cannot blame anybody if the coercion is not caught—that is, the pernicious coercion that I spoke about in the second reading debate and have also spoken about in my other contributions. Perhaps the question that needs to be asked is: was consideration given to a separate and distinct penalty for when the inducing of a person actually leads to their death, as opposed to simply an inducement that was caught prior to the ultimate demise of the affected party?

Mr M. McGOWAN: The Criminal Code also applies here. Section 273 of the Criminal Code states that any person who commits an act or makes any omission that hastens the death of another person who at the time has a disorder or disease arising from another cause is deemed to have killed that other person. When that act or omission to cause death or injury results in death, the offence of murder or manslaughter will apply, and the penalty is life imprisonment.

Mr P.A. KATSAMBANIS: Premier, since clause 98 includes a provision that, effectively, substitutes the murder and manslaughter provisions, why was consideration not given to incorporating further clauses—a clause 99(3) and (4), as the case may be, or a clause 99A—in which the penalty is higher for someone who commits a crime, as spelt out in clause 99(2), and that crime leads to the death of the person. I think that we are half pregnant here; we are creating some specific crimes and then leaving gaps where others might or might not be covered by the Criminal Code. Perhaps it is, again, something that could be contemplated between the houses. I am not being obstructionist in any way. I am trying to make this legislation as coherent and functioning as possible.

Mr M. McGOWAN: It is up to any prosecution, in relation to these matters, to choose which offence and which act best applies. Sometimes they will choose the Criminal Code, but the Criminal Code does cover the field.

Mr P.A. KATSAMBANIS: I accept that the Criminal Code may cover the field. I am just concerned that the provisions here are incomplete and do not cover the field. That theme has emerged throughout this entire consideration in detail. I accept that the government has delivered this bill as a magnum opus, and as a sermon from the mount, and is not interested in improving it or changing it in any way. Take this as a comment: it is really bad legislative practice that will result in really dangerous outcomes from a piece of legislation that deals with the most vulnerable people in our society. I know that my comments are falling on deaf ears. I am not trying to be obstructionist. I just think that if we are going to have legislation such as this, we should make it as complete as possible and as good as possible. Again, if a few people cast their eyes on this between the houses, I am sure that they will actually improve the bill, including the rather incomplete provisions in clause 99.

Ms M.M. QUIRK: This question probably relates to all these offence provisions. I am concerned that written material may be needed to found a prosecution case. I am wondering whether there are any constraints on either the CEO or the board in providing information needed for the purposes of the prosecution.

Mr M. McGOWAN: Police will be able to investigate these matters, and use their ordinary powers to seek whatever material they can under their existing powers.

Ms M.M. QUIRK: Throughout this consideration in detail, there have been issues about patient privacy, and documents and the way they are handled. The Premier is giving us assurances that police will have no problems sourcing them, or their being volunteered by the board or the CEO.

Mr M. McGowan: Yes.

Clause put and passed.

Clause 100: Inducing self-administration of prescribed substance —

Mr Z.R.F. KIRKUP: In relation to inducing the self-administration of a prescribed substance, I am assuming that means trying to corral or force someone to take it. Is that the Premier's definition of the term?

Mr M. McGOWAN: It means to try to coerce, corral or persuade. There may well be a common law definition. I will just see if we can find it, but I am confident that the courts understand the meaning of the word "induce".

Mr Z.R.F. KIRKUP: Are we waiting on that information to come back?

Mr M. McGowan: We are seeing whether we can find it.

Mr Z.R.F. KIRKUP: Thank you.

Mr M. McGOWAN: It is leading someone to do something through strong persuasion and coercion.

Mr P.A. KATSAMBANIS: I have a couple of questions about this. Following on from the member for Dawesville's question, where would force come into this? If a person forces another person to administer a prescribed substance, would that be coercion? Would that be inducing? Where would that fall into it?

Mr M. McGOWAN: It would be covered by clause 98, or coercion under clause 100.

Mr P.A. KATSAMBANIS: I do not know about clause 98, because that deals with the person of ill intent administering the substance.

The DEPUTY SPEAKER: I think the Premier may have meant clause 99.

Mr M. McGowan: I meant clause 98.

The DEPUTY SPEAKER: Clause 98? It is not mentioned there.

Mr P.A. KATSAMBANIS: It deals with administering the substance. Forcing someone to take it is not administration. I hope that coercion or inducement would include simply forcing them. I am trying to see why some language was chosen and not other language. Again, this is being left up to common law interpretation when the questions are too hard to answer. We are replacing either existing provisions of the Criminal Code or existing common law provisions with statutory provisions when we have already thought about it and done it. It seems as

though these things are being made up as we go along. We are dealing with an extraordinarily serious subject matter, perhaps the most serious subject matter that has ever been considered by this Parliament, save for maybe capital punishment, which I think falls into exactly the same category. Others may have different views. It is one of the most serious subject matters that we have ever dealt with. Unfortunately, the common law is used when it suits us and we override the common law when that suits us. It is really disappointing that legislation that ought to be as watertight as possible in this subject area seems to be not watertight at all.

I will move on with my other question about clause 100. It is a question about the limits of this provision. Clause 100 states —

> A person commits a crime if the person, by dishonesty, undue influence or coercion, induces another person to self-administer a prescribed substance.

I want to clarify something and I hope the answer is yes: does the self-administration of a prescribed substance include circumstances in which the individual who will take the substance has procured it under the provisions of this bill? They have the substance. It has come to them and for some reason or other they have decided either they do not want to take it or they are not going to take it right now, but someone induces them to take it. Does this clause cover that circumstance?

Mr M. McGowan: Yes.

Mr P.A. KATSAMBANIS: Great. Does it also cover the circumstance in which another person—not the patient, but the person who wants to cause harm—somehow or other comes into possession of the prescribed substance and forces that to be taken? The patient, if you like, has not come into the possession of the substance because they went through the process; this other person has somehow or other acquired it and convinced the other person to take it. Does it cover that circumstance as well?

Mr M. McGOWAN: If another individual, the agent or contact person gets the substance and tries to force or coerce the individual to take it, that would be captured by clause 100.

Mr P.A. KATSAMBANIS: I am not asking about the agent. Let us say that a little bit of this substance slips through the cracks. I will use the example of dishonesty. A person who wants someone else to pass away grabs this medication, walks up to them and says, "Here you are. This is medication that I have googled on the internet. I think this medication is going to make you better", and the person takes it. It is the prescribed substance; it has just fallen through the cracks somehow. Will this be the penalty that is used? I hope it is. I hope that is covered by clause 100. It is the exact circumstances that one would want a provision like this to cover. I want some clarity around that.

Mr M. McGOWAN: It is covered by clause 100.

Mr P.A. KATSAMBANIS: Thank you.

Ms M.M. QUIRK: I have taken the opportunity to look at the equivalent section in the Victorian legislation. I think it is much more precise in its drafting, which means that the kind of confusion that the member for Hillarys is experiencing is basically eliminated. Section 86 of the Victorian legislation says —

> A person must not, by dishonesty or undue influence, induce another person to self-administer a voluntary assisted dying substance dispensed in accordance with a self-administration permit.

It is clear that it is limited to the scope of the act, whereas clause 100 talks about a person who induces another person to self-administer a prescribed substance. It does not necessarily need to be someone who has acquired the prescribed substance and it may well be in circumstances that are outside the scope of this legislation. Sorry; I am tired, so I am not being very sensible. However, there are material differences between section 86 of the Victorian act and this bill. It would be my submission that the Victorian act is a lot more precise because it uses the words "dispensed in accordance with a self-administration permit". That makes it clear that it comes under the tenure of the legislation and is not just a general prohibition.

Mr M. McGOWAN: Section 86 of the Victorian act is far weaker than this clause. The punishment under clause 100 is imprisonment for life; the punishment under section 86 of the Victorian act is imprisonment for a maximum of five years.

Ms M.M. QUIRK: With respect, Premier, it can be as heavy a penalty as one likes, but if a prosecution is not actually secured, it makes no difference. What I am contending is not about the penalty but about the wording, which contextualises it within the scheme under this very bill.

Clause put and passed.

Clause 101: False or misleading information —

Mr Z.R.F. KIRKUP: Clause 101(1) could conceivably capture the consulting, coordinating or administering practitioner. I imagine that would apply to them equally.

Mr M. McGOWAN: Yes.

Mr Z.R.F. KIRKUP: Clause 101(2)(b) provides for a person who might provide a statement that —

> omits anything without which the statement or information is, to a person's knowledge, misleading in a material particular.

What burden is required to prove that that exists? I suspect that as per the answers already provided there would be some precedent elsewhere that there has to be a stated intent or desire to mislead; is that right? I am not making much sense; similar to the member for Girrawheen—tired.

Mr M. McGOWAN: Any element of an offence is required to be proven beyond reasonable doubt.

Mr P.A. KATSAMBANIS: Why is the term "in a material particular" included in clause 101(2)(a) and (b)? Why is it not limited to any statement or information that a person knows is false or misleading? Why is the extra requirement that it be a "material particular" included, given that if something is proven to be false and misleading, that will be a matter for debate in any litigation? Why limit it to only material particulars, because then we will need a finding on what is material and immaterial?

Mr M. McGOWAN: It is to ensure that anything covered by this clause is not trivial or inconsequential; it is something of a material particular, which is not immaterial or inconsequential.

Ms M.M. QUIRK: I can give an example. If one of the forms were submitted and a practitioner, for example, were aware that the person had not resided in Western Australia for the preceding 12 months, that would be a material particular.

Mr M. McGOWAN: It would be a material particular.

Clause put and passed.

Clause 102: Advertising Schedule 4 or 8 poison as voluntary assisted dying substance —

Mr Z.R.F. KIRKUP: I have a few quick questions on this clause. I understand the intent of the clause; the Deputy Premier has spoken about it at length. I have a query about the definition of "advertise". I appreciate that in the traditional sense a newspaper or whatever would be captured by this, but what would happen if this information were provided online?

Mr M. McGOWAN: An online advertisement is still captured by this.

Mr Z.R.F. KIRKUP: I appreciate that, but what if it finds its way online not through an advertisement? If a person expresses the contents of a schedule 4 or schedule 8 substance in a non-advertisement form, will that be captured?

Mr M. McGOWAN: There are further clauses restricting the publication of information such as clauses 105 and 106.

Mr Z.R.F. KIRKUP: I appreciate that. I will save those questions for that part. Let us say that the advertisement is accessed by a person in Western Australia, and let us use as an example the advertisement online that the Premier just spoke about. It is published by someone outside the jurisdiction but accessed by someone within the jurisdiction. Is that still an offence; and, if so, how would it be prosecuted if the advertisement were displayed on a website hosted in a different state or overseas?

Mr M. McGOWAN: Someone who sees an advertisement has not committed an offence; it is the person doing the advertising who commits the offence.

Mr Z.R.F. KIRKUP: I appreciate that. The person commits the offence in another jurisdiction; they provide the advertising. If someone is in Queensland or overseas, for example, and they provide information saying what exists—there are a lot of websites on this sort of stuff and I imagine some people might want to display it for whatever reason—is it still an offence in that case? That is all.

Mr M. McGOWAN: It is about the advertising in Western Australia, but when prosecuting someone in another jurisdiction, there is always an issue of whether that person can be accessed by whatever means, such as extradition, either interstate or overseas.

Mr P.A. KATSAMBANIS: Just to follow up the point of the member for Dawesville about advertising, particularly online, an advertisement has a particular form, and we spent a bit of time earlier this year talking about what constitutes an advertisement or publication in relation to ticket scalping. It is a rather complex area when online circumstances are overlaid, because people do not necessarily need to advertise. They could promote something on their Facebook page; they could put something up there. I ask simply for completeness. I support the intention of this bill with clause 102. I do not want people promoting schedule 4 or 8 poisons in any way, particularly as voluntary assisted dying substances; that is the last thing we want. Even this bill wants that very, very highly regulated. Why was it not contemplated that the words be expanded, so instead of the bill just saying "advertising", it perhaps could say "advertises, promotes or in any other way represents a schedule 4 or

schedule 8 poison as a voluntary assisted dying substance" simply to cover all those question marks about whether a post on Instagram is advertising or simply a statement or a representation. Again, the drafting here could have been better, to give better protection than currently exists and to avoid the whole thing of letting the courts decide whether or not it is an advertisement. It could be made very, very clear that any claim made in public, whether an advertisement or not, would be captured by this clause.

Mr M. McGOWAN: Advertising involves publication, so it is pretty clear what the word means.

Ms M.M. QUIRK: What is the mischief of clause 102? What is the rationale for having that in the bill?

Mr M. McGOWAN: It would not be prudent to allow the public to know which schedule 4 and 8 poisons may be used for voluntary assisted dying as this may encourage persons who are not subject to a voluntary assisted dying process to stockpile their supply for the purpose of suicide or assisted suicide outside the protections contained within the voluntary assisted dying legislation.

Mr P.A. KATSAMBANIS: In the Premier's answer to my question about why the terminology was not extended, the Premier said that advertising involves publication, so we are okay. I accept that advertising will involve publication. Advertising is one subset of publication, but publication is much broader than advertising and that was the point that I was making: although advertising may involve publication, publication may not necessarily involve advertising and that is the missing link in this clause to make the protection as watertight as possible. I want to emphasise that although the Premier's answer might have been technically correct, it does not cover the failing of this clause.

Mr M. McGOWAN: Advertising means to publicise information about a thing or to make a fact known.

Ms M.M. QUIRK: This clause is about someone saying, "We have phenylene available for those who want to end it all." Would that be a correct assessment of the mischief of that clause, Premier?

Mr M. McGowan: I am sorry, I did not hear the question.

Ms M.M. QUIRK: This clause is about someone saying that they have in their possession certain drugs and are not naming those drugs. That is the rationale behind the clause. If the person does not use the drugs but says the names of the drugs, and says, "I have access to schedule 4 or schedule 8 poisons for the purpose of administration under the act", would that fall foul of this offence? Does the Premier understand what I am saying or do I need to rephrase it?

Mr M. McGowan: I do not understand, I am afraid.

Ms M.M. QUIRK: Someone advertises that they are in a position to administer schedule 4 or schedule 8 poisons. They do not name them but they say, "I am in a position to lay my hands on this stuff and can administer it to you." I am not suggesting that the drugs are illegally obtained, but the mere fact that they advertise that they can acquire them for the purposes of administration, would that be covered by this clause?

Mr M. McGOWAN: I think the wording of the clause is very clear and covers the circumstance that the member alluded to.

Ms M.M. QUIRK: The intention is that a person commits a crime if they name a schedule 4 or 8 poison as a voluntary assisted dying substance. That is the mischief that the clause is trying to address. It is the naming of the drug, so then people go out and acquire it somewhere else and do their own thing.

Mr M. McGOWAN: They do not have to name the particular drug, although that would be covered by the clause. All they have to do is say that it is a schedule 4 or schedule 8 poison, or both, to be captured by the clause.

Mr Z.R.F. KIRKUP: Can the Premier imagine that a Google search or something like that might fall within this clause? As such, could it be conceived that Google, for example, listing the information or providing the information publicly could be captured by this? If I search it, for example, and try to find a schedule 4 or schedule 8 poison and link it as a voluntary assisted dying substance, could Google Australia be conceivably captured by this? The Deputy Premier made the point that we do not want to name it because it could conceivably increase the price or something like that. Obviously, on an online environment it is very hard to do that. Is there an ability to stop the publication of it and to what extent?

Mr M. McGOWAN: I think the member is asking who would be doing the advertising. Clearly, whoever runs Facebook, Twitter or Google would not be guilty of an offence; the person who did the advertising would be guilty of the offence.

The DEPUTY SPEAKER: I understand there is an agreement to take a 15-minute break.

Mr A. KRSTICEVIC: I know the focus is on schedule 4 and schedule 8 poisons for voluntary assisted dying. What if someone advertises it as a poison available for voluntary assisted dying? They are not saying schedule 4 or schedule 8 but are advertising it as a poison that is appropriate for voluntary assisted dying. How would that be caught, if at all?

Mr M. McGOWAN: It would be a specific offence under the Medicines and Poisons Regulations 2016.

Clause put and passed.

Sitting suspended from 10.06 to 10.20 pm

New clause 102A —

Ms M.M. QUIRK: I move —

Page 67, after line 24 — To insert the following new clause —

102A. Publishing statements about accessing voluntary assisted dying

(1) In this section—

publish has the meaning given in the *Civil Liability Act 2002* section 16.

(2) A medical practitioner, or a person acting for a medical practitioner, must not publish, or cause to be published, a statement that may reasonably be thought to be intended or likely to encourage or induce a person —

(a) to make a request to a medical practitioner for access to voluntary assisted dying; or

(b) to use the services of a medical practitioner in order to make a request for access to voluntary assisted dying.

Penalty for this subsection: a fine of $10 000.

(3) A medical practitioner does not contravene subsection (2) only because —

(a) of a statement made to a person —

(i) who is receiving ongoing health services from the medical practitioner; or

(ii) at a health facility as defined in section 160(1) where the medical practitioner carries out health services;

or

(b) the medical practitioner gives a patient information under this Act, including under section 19(4)(b) or (5)(b); or

(c) of a statement made on the medical practitioner's website that is limited to statements about —

(i) the operation of this Act and a person's right to access voluntary assisted dying; and

(ii) the conditions under which the medical practitioner is prepared to do anything under this Act as a medical practitioner.

(4) A person acting for a medical practitioner does not contravene subsection (2) only because of a statement made —

(a) to a person —

(i) who is receiving ongoing health services from the medical practitioner; or

(ii) at a health facility as defined in section 160(1) where the medical practitioner carries out health services;

or

(b) on the medical practitioner's website that is limited to statements about —

(i) the operation of this Act and a person's right to access voluntary assisted dying; and

(ii) the conditions under which the medical practitioner is prepared to do anything under this Act as a medical practitioner.

In the previous clause, we dealt with the advertising of poisons, but we have not dealt with medical practitioners advertising for services for people to access voluntary assisted dying. This is on all fours with section 16 of the Civil Liability Act, which limits and restricts lawyers from advertising for personal injury claims. I think it is self-explanatory in that regard. We think this new clause is very important, because some practices will set themselves up as voluntary assisted dying centres. That has all sorts of ramifications with the independence that has been sought. Also, I think that patients need to have independent medical practitioners. It is all part of a continuum, but if it is good enough for lawyers to be restricted in acting for clients who are pursuing personal injury claims, we think that it is more than appropriate in these circumstances.

Mr P.A. KATSAMBANIS: I rise to support proposed new clause 102A. As the member for Girrawheen has outlined, it is pretty similar to some of the prohibitions that other professions have in relation to some of their advertising. It does not stop medical practitioners from providing advice or even letting people know about their rights under this legislation, but it covers off the concern in some sections of the public—a concern I share, I must say—that there may be one or two people who want to set up a business based around voluntary assisted dying. That would shift the goalposts from a procedure that is available to people at their end of life to something that is directly marketed to people as something that they ought to consider more generally. I think the proposed new clause is well drafted and well calibrated, particularly subclause (4) which offers some defences or indicates when people do not contravene the prohibition against publishing statements; that is very comprehensive. They can still make statements to someone who is receiving ongoing health services from a medical practitioner or a health facility, and a medical practitioner can make statements around the operation of this legislation, the person's right to access voluntary assisted dying, and the conditions under which the medical practitioner is prepared to do anything under this legislation as a medical practitioner. Again, it does not limit any of that. Practitioners can continue to do that. Because there are question marks about how close the two medical practitioners might be to each other, particularly in a business sense, this sort of prohibition is necessary. I think it is offered in good faith, and I hope the government accepts it in good faith because it adds an extra layer of protection and is a safeguard. The government likes to use the term "safeguard", and I think this is a very appropriate safeguard for the restriction of those rather rare individuals—we know they exist—who might want to treat this sort of regime as a massive business opportunity rather than as a health option, one other choice, as it is portrayed by the proponents of the legislation. That is why I support this proposed new clause. I think it is very reasonable and I hope the house gives it fair consideration.

Mr R.H. COOK: I certainly understand the sentiment behind this proposed new clause. It is important that we have a set of guidelines or driving protocols for professional conduct standards about the way in which medical practitioners conduct themselves, particularly with regard to this legislation. From that point of view, I certainly commend the member for her choice of words. I will say that I do not believe it is necessary for the reason that the conduct of medical practitioners is suitably regulated under the Health Practitioner Regulation National Law (WA) Act 2010. That is the law that we rely upon for both this legislation and other legal frameworks around the conduct and activities of medical practitioners. Two sections within that act are pertinent. Section 39 provides for the development of regulations, codes and guidelines, particularly with regard to the advertising of a regulated health service by health practitioners. Section 41 provides for approved registration standards, codes or guidelines in disciplinary proceedings.

Although I understand the sentiment with which the member has moved this proposed new clause, I do not believe it is necessary because these activities are already regulated for the purposes of the conduct of medical practitioners. I note the comments of the member for Hillarys about commerciality, but that is a theme that we have visited before.

Ms M.M. QUIRK: I knew it was a somewhat quixotic endeavour. Is the minister aware that certainly overseas specialised clinics that promote themselves as being solely for voluntary assisted dying have been set up? To regulate conduct by way of professional codes or ethical guidelines is not good enough for lawyers in the case of the Civil Liability Act, so I am probably leading with my chin in asking whether the minister is saying that lawyers need more constraints and restrictions on them by way of enforceable legislation than do doctors. The Civil Liability Act is principally there so that ambulance-chasing lawyers behave themselves. Is the minister telling the chamber that he would not contemplate that the ethical standards of anyone in the medical profession would not be similarly compromised?

Mr R.H. COOK: No, member; I am simply saying that we have very effective regulation of our medical workforce through the Health Practitioner Regulation National Law.

Division

New clause put and a division taken, the Acting Speaker (Ms J.M. Freeman) casting her vote with the noes, with the following result —

Ayes (12)

Mrs L.M. Harvey	Mr Z.R.F. Kirkup	Mr R.S. Love	Dr M.D. Nahan
Dr D.J. Honey	Mr A. Krsticevic	Mr W.R. Marmion	Ms M.M. Quirk
Mr P.A. Katsambanis	Mr S.K. L'Estrange	Ms L. Mettam	Mrs A.K. Hayden *(Teller)*

Noes (36)

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

New clause thus negatived.

Clause 103: Cancellation of document presented as prescription —

Mr Z.R.F. KIRKUP: Thank you very much, Acting Speaker. As always, your efficiency is appreciated.

At subclause (2) under "Cancellation of document presented as prescription", is there a time frame within which the physical cancellation must occur? I note, again, we usually would have written the word "immediately" but that language has been constrained. I am keen to understand why the supplier must cancel the document by marking it, and if they do not, obviously there is a term of imprisonment for up to 12 months. Is there a specific time frame around that? Imagine a situation in which the supplier has not cancelled the substance and they get caught and then they say, "I was going to cancel it, but I just didn't get around to it" or something like that. There is no specific time frame in which to do that. I am keen to understand what that might look like.

Mr R.H. COOK: Member, in that scenario, if the supplier said, "I was going to cancel it. I saw that. Yes, I realised I should have cancelled it, but I haven't done it six months later", that would not be adequate. It is at the point the decision is made that they will cancel the substance that we would expect them to proceed forthwith.

Mr P.A. KATSAMBANIS: I note that the CEO needs to be informed of the cancellation, but under this clause there is no need to inform the board. Is there a reason why the board will not be informed given that it would be given notice of the prescription in the ordinary course of events?

Mr R.H. COOK: Member, I am advised that the board will be able to see the cancellation through the portal arrangements, so it is not necessary. Also, in the context of the management of medications and poisons and the prescriptions thereof, it is appropriate that that is oversighted by the CEO in terms of that chain of command.

Clause put and passed.

Clause 104: Contact person to give unused or remaining substance to authorised disposer —

Mr P.A. KATSAMBANIS: This clause creates penalties for the contact person not returning the prescribed substance to an authorised disposer. When the contact person is appointed, they will be given some information that will include a list of "musts". Will that information on the approved form include a step-by-step guide of their obligations under clause 104 and the penalties if they do not comply? The last thing we want is someone to inadvertently fall foul of this because they simply were not informed of their obligations.

Mr R.H. COOK: Yes, and that is precisely the intent of clause 148, which we will come to in due course—sooner rather than later, I hope! Clause 148 deals with the information that the board needs to send to a contact person so that they are aware of their obligations under the act.

Ms M.M. QUIRK: The minister is, of course, correct. We need to look at clauses 67, 104 and 148 together. Clause 67 provides that a contact person may refuse to continue in that role. I think we canvassed with the Attorney General last night the situation in which the contact person has been given their instructions, duties and role, and they were sent out in some prescribed form. The contact person may well have consented on the basis that they were just supplying the phone number or point of contact, and English may be their second language. There does not seem to be any requirement to ensure that the role is adequately understood by the contact person, and that may well make them liable to imprisonment for 12 months. I have to say that we did not get a satisfactory answer; in fact, we got a misleading answer from the Attorney General last night. I would like to clarify whether consideration has been given to how a communication is given to a contact person whose second language may be English.

Mr R.H. COOK: As the member knows, this was discussed extensively last night, so I do not mean to go further into it. Obviously, it is appropriate that the information is in a form that the contact person understands, and that

the contact person can be reasonably expected to understand their obligations under the legislation. From that perspective, we discussed the occasions on which the chief executive officer, through the implementation phase, would be required to make sure that the laws are managed in a way that acknowledges people from different cultural backgrounds. Again, clause 148(b) outlines the support services available to assist the contact person to comply with the requirements referred to in paragraph (a). It contemplates the fact that support would be provided to the contact person so that they can fulfil their role.

Mr Z.R.F. KIRKUP: Under clause 104(1), the substance has to be provided back within 14 days. That entirely has merit. What happens if an aberration occurs? I am thinking in particular of a remote community or regional area where it is very difficult for that to come back from. I am hoping that there would be some leniency or some ability for that to be looked at as an extreme circumstance that would not automatically be prosecuted. Would that be the case? What would that require? Who would be in charge of that? Would the CEO be initiating it?

Mr R.H. COOK: The CEO is the authorised officer in relation to simple offences, so, obviously, they would take that into account in the context of a remote community or something of that nature.

Mr Z.R.F. KIRKUP: In the event that a matter might be referred by the board, if the board sees it as a concern, would the mechanism then be that the board would refer it to the CEO? I am imagining a situation in which, because of the bureaucratic situation that might exist, the board might immediately trigger it to the police, for example, rather than the CEO. What is the definition there in terms of simple offences? Is it 12 months' imprisonment?

Mr R.H. COOK: Ordinarily, in the first instance, the Voluntary Assisted Dying Board would notify the CEO if it became aware of any irregularities, but it may alert the police if it had a view about that. As always, the police will investigate with the powers they have under the Medicines and Poisons Act or something of that nature, and would undoubtedly liaise with the chief executive officer, who has overall responsibility for that act, to see whether they should investigate further or the matter is in hand and the CEO is exercising his or her authority under the simple offence provisions.

Mr Z.R.F. KIRKUP: I refer to subclause (1). If a person has revoked their self-administration decision, the contact person has to give the prescribed substance to the authorised disposer. Why is the patient or the agent, who was previously charged with retrieving the substance, not required to give it to the disposer—unless I have misread that?

Mr R.H. Cook: The patient has died.

Mr Z.R.F. KIRKUP: No, subclause (1) is not in the event that the patient has died. Subclause (2) covers that.

Mr R.H. COOK: There is nothing to stop the patient from retrieving the substance. The agent, under this bill, is simply the person who retrieves the medication from the authorised supplier. The contact person, as we have discussed extensively, is responsible for the voluntary assisted dying substance under the act and, ultimately, must bear the burden of responsibility to give it to the authorised disposer. There is nothing to stop the patient from doing it, but as I have reminded the member for Darling Range on a number of occasions, these people are at the end of their lives, so chances are that they are not very mobile.

Mr Z.R.F. KIRKUP: I appreciate that, minister.

Referring to subclause (1), I imagine that the self-administration decision will be made and the patient might be at the very early stage rather than the end stage and will make a decision to revoke their self-administration decision. I refer to subclause (2). The way in which the legislation is drafted suggests that once a patient dies, the contact person must return the substance within 14 days. I can imagine a situation, possibly, that would occur in which the patient is, on the balance of probabilities, going to die within six months, so they go through the process and the contact person is appointed and everyone is ready to go, but the decision is not yet made that the person wants to take the substance. They might not have contact with the contact person. A good example is that I have not spoken to my mother for about six weeks.

Mr T.J. Healy: Call your mother!

Mr Z.R.F. KIRKUP: Thank you very much!

I can imagine a situation in which the contact person might not be in regular contact with the patient, especially over a number of months.

Several members interjected.

The ACTING SPEAKER: Members!

Mr T.J. Healy: I'll call her!

Mr Z.R.F. KIRKUP: Thank you very much, member for Southern River. I am sure she would appreciate your call!

Why is it 14 days from death? I can imagine a situation in which the patient may have passed on without having taken the substance, but the contact person might not be aware of it and in three weeks they call them or they realise that something has happened and that the patient has passed away, but they have received no notification of it. That person may possibly be automatically charged with an act that may see them be imprisoned for 12 months.

Mr R.H. COOK: Notwithstanding the frequency with which the member for Dawesville contacts his mother, he may be judged in this chamber but he is not held to account by the laws of the land. In this particular case, a contact person will in fact have obligations and legally binding responsibilities under the legislation. They are expected to keep in regular contact with the patient. Regardless of whether that patient leaves us now or in three or six months' time or whatever, the contact person basically will have responsibility for the voluntary assisted dying substance.

Mr Z.R.F. KIRKUP: I would like Hansard to note that the member for South Perth just noted that I would not be his contact person, based on my lack of frequency of contact with my mother by the sounds of it!

I appreciate that there are obligations; I had not thought about that.

Mr P.A. Katsambanis: Also, you are likely to outlive him.

Mr Z.R.F. KIRKUP: I might.

I appreciate that obligations are part of the burden of becoming a contact person. That makes perfect sense; I appreciate the minister's clarification.

With respect to subclause (3), there is reference to any prescribed substance that the contact person knows is unused. What happens if the person does not know there is an unused portion? I do not know what circumstances might exist, but perhaps the substance is prepared and then locked away or hidden because the patient might not want the substance to be out in public or in whatever setting in which they are doing this, so they put it away somewhere and it is very difficult to find. Of course, the contact person now has 14 days in which they must try to track it down. I appreciate the minister's response to my previous question about having regular contact and engagement, but in the event that they cannot identify or locate it, which I could imagine may happen at some point in time, will they possibly be liable to be charged or imprisoned? Is there any option to try to stop that occurring in the first instance?

Mr R.H. COOK: This subclause is essentially there, I guess, to protect the contact person if they could not reasonably know about the unused portion. As the member said, it may be at the bottom of the syringe, at the back of a cupboard or something like that. It is essentially allowing for that fact.

The ACTING SPEAKER (Ms J.M. Freeman): The question is that clause 104 stand as printed. All those in favour say aye.

Ms M.M. QUIRK: Madam Acting Speaker.

The ACTING SPEAKER: Oh; member for Girrawheen.

Ms M.M. QUIRK: You groaned.

The ACTING SPEAKER: Who groaned?

Ms M.M. QUIRK: I thought you did, Madam Acting Speaker; I apologise.

We could have a scenario in which a prescribed substance for self-administration is with the patient and he or she dies, either without having to have that prescribed substance or having had only a portion thereof. How do we keep track of that? I know that it is only small quantities in the larger scheme of things, but what is to stop the contact person from maybe pocketing half or two-thirds of the substance and returning a third and saying, "Oh, well; this is all the patient needed to take before they shuffled off this mortal coil." That is what I am asking. How do we prevent the contact person from retaining the drugs or misleading authorities about how much was used?

Mr R.H. COOK: This is precisely why we have penalties under the legislation for the misuse of either these substances or other substances. A contact person or anyone who is spending time with the patient might come in contact with any number of medications, which would be available to the patient and other people in the patient's house. I am reminded of the commentary of the Leader of the Opposition last night when she discussed her circumstances. She was amazed at the amount of different sorts of drugs, some very powerful, that were essentially left over after the event. There are very strict laws under the Medicines and Poisons Act and the Misuse of Drugs Act, and the contact person is subject to extra responsibilities, which are detailed in clause 104.

Ms M.M. QUIRK: Presumably, if a contact person returns a portion of the drugs, but not all of them, will they still be liable for possession of whatever part of the substance they decided to retain?

Mr R.H. COOK: Yes.

Mr Z.R.F. KIRKUP: I note that all the penalties prescribed in this clause are 12 months' imprisonment. Is there any prospect that that will be relaxed or varied, or is it a fixed point in time? Is it a minimum sentence of 12 months' imprisonment or is that the maximum? I am keen to gain some understanding about that because I imagine it would vary according to the circumstances.

Mr R.H. COOK: That is the maximum penalty. In the context of prosecution and sentencing, there may be variations on that theme.

Clause put and passed.

Clause 105: Recording, use or disclosure of information —

Dr D.J. HONEY: Subclause (1) states —

> A person must not, directly or indirectly, record, use or disclose …

I take it that "record" means writing down. Will that include doctors' notes? To pre-empt where I am heading with this, I would have thought that a doctor would always be able to record all the details of any medical issue that they have been involved with, including this. Given that under this bill someone can raise concerns up to two years later, surely it would be important that a doctor is able to record all the details, including a person's name and all the details of their involvement in the voluntary assisted dying process. Could the minister please clarify that? Does it apply to doctors' notes or not?

Mr R.H. COOK: I draw the member's attention to subclause (2), which sets out things to which subclause (1) does not apply in the recording, use or disclosure of information—that is, paragraphs (a) to (f).

Dr D.J. HONEY: I looked at them but I did not know whether any of them would apply to a doctor's notes. Would the minister be able to clarify for me which of those paragraphs in subclause (2) cover a doctor being able to take notes, including the details of a person who is subject to the process?

Mr R.H. COOK: I think doctors' notes would be captured in subclause (2)(a) or (2)(b) in terms of requirements under the act.

Dr D.J. HONEY: I am not labouring this point for any other reason than I want it to be clear that a doctor will be absolutely protected when they take appropriate notes, including a person's name. Could the minister confirm that with his advisers? It may be that he has already done that, but I would like real confirmation of that.

Mr R.H. COOK: I can provide that clarity. The doctor would obviously record, use or disclose the information for the purposes of performing a function under this legislation, which is outlined in subclause (2)(a). That would absolutely capture that set of activities.

Mr Z.R.F. KIRKUP: Previously, I asked the Premier a question about advertising the schedule 4 and schedule 8 poisons and how that might be displayed online versus advertising information. When the Premier answered that question, he pointed to clause 105 and information that is published in relation to schedule 4 or 8 poisons being covered under this clause as well. I am trying to imagine a circumstance in which the information is not advertised, but the information is published in some way. Will this clause still cover that, if a person provides that information?

Mr R.H. COOK: Yes, I am advised that it will.

Mr Z.R.F. KIRKUP: Thank you, minister. I note that subclause (1) states that a person must not, directly or indirectly, record, use or disclose information, which I think the minister just covered. Does it have to be obtained because the person has a function at any time under the legislation? My reading of that is that they have to previously have been a practitioner, a patient, a contact person or something like that. Will that cover the person who has had no role to play in the process thus far but they are still providing information online? I was getting quite concerned in the sense that the merits of clause 102 in relation to advertising are perfectly sensible. I was worried that captured only people who advertised versus information that has been put out there. My concern is that if the information is put out there under clause 105(1), it will only bind people who have been previously involved in the process. If someone is independent of that or never been part of it, will they be subject to the penalty, and necessarily penalised if they publish information that is related to it?

Mr R.H. COOK: The only way someone would get information about the schedule 4 or schedule 8 drugs used in the voluntary assisted dying substance would be if they had a role to play in the context of the voluntary assisted dying regime, the act or otherwise. Nothing will stop someone from doing their own research overseas or something like that and creating their own pool of information that they draw upon. But in that instance, we say that they do not have any authority or verification that they are the substances involved. For the purposes of what the member is saying, the only way someone would obtain that information would be if they had a role under the act.

Mr Z.R.F. KIRKUP: Thank you very much, minister. I want to provide some context for the position I am coming from. I do not want the details of the substance out there. The member for Morley and, I think, the minister have

spoken about other jurisdictions publishing information and the price going through the roof. That is not what we are trying to achieve here in terms of equitable access. I was worried that if a person provides information in relation to the substance in particular but does not advertise it but comes across the information and has no function—a family member, for example—they will not necessarily be a person with a function under the legislation; they would be related. I would consider "function" in the definition to be a role in terms of patient and contact person. They are functions. I am not trying to deliberately go in a cycle here, but I am worried about what I think is captured under the advertising clause, which has merit and is something I support. I am worried that this clause does not capture that person. If they are not advertising it but are related in some third party fashion, that information could seriously get out there, but from my understanding of how the clause stands, there is no penalty.

Mr R.H. COOK: Regarding the scenario the member described with the family member standing around and so on, someone might say, "This is the stuff" and they could take it away to a lab and analyse it, I suppose. Remember that the details of what is in the voluntary assisted dying substance is not written on the pack, and things of that nature. I am trying to foresee a situation in which it could happen; I simply cannot, other than whether that information is disclosed in a way that is unlawful by someone who is involved in that. I think that clarifies that.

Clause put and passed.

Clause 106: Publication of personal information concerning proceeding before Tribunal —

Mr Z.R.F. KIRKUP: Clause 106(1) states, in part —

> ***publish*** means to disseminate to the public or a section of the public by any means, including the following —
>
> … a website, an online facility or other electronic means.

I assume that that was incorporated to cover things such as mobile applications or something like that. Is that the reason that that definition has been included?

Mr R.H. COOK: Yes.

Mr Z.R.F. KIRKUP: In relation to a website or something like that that might be hosted outside Western Australia, what capacity do we have to stop that from occurring in the first instance?

Mr R.H. COOK: Our Criminal Code extends to the borders of Western Australia.

Clause put and passed.

Clause 107: Failure to give form to Board —

Mr P.A. KATSAMBANIS: Clause 107 is headed "Failure to give form to Board" and states —

> A person who contravenes a provision of this Act listed in the Table commits an offence.
>
> Penalty: a fine of $10 000.

The table lists a series of about 18 different forms or different sections under which forms need to be provided to the board. My question is a relatively simple one—simply procedural. The penalty is a fine of $10 000. Is there any intention that a modified penalty may be introduced that may be dealt with by infringement notice rather than prosecution, or is it intended that every breach of failure to provide a form would lead to prosecution under this legislation?

Mr R.H. COOK: As the member observed, this is about a failure to provide particular forms to the board, which will incur a maximum fine of $10 000 for a registered health practitioner. It will apply in the same way as the sentencing and fines act in the way that maximum penalty is applied. The CEO will initiate the investigation of these offences.

Mr P.A. KATSAMBANIS: I understand that, but I am just asking whether the CEO at this stage intends to issue a monetary penalty rather than prosecute in the way that the modified fines regime works in Western Australia. All I am seeking to clarify is whether there is a current intention around that.

Mr R.H. COOK: No, member, there is no current intention, but these are obviously very early stages.

Mr Z.R.F. KIRKUP: The accountability mechanism of the form and the role that it will play with the board is quite significant in the relationship the board will have in monitoring the legislation—possibly referring it to the State Administrative Tribunal and the like. I think $10 000 is not an insignificant penalty, but why have we not settled on something a bit larger than that? The whole way through this legislation, the form is central. The provision of quite a number of those forms to the board is central to the oversight, and I am interested about why we did not go with a more significant penalty.

Mr R.H. COOK: It is because this is ultimately about the failure to lodge the forms, not necessarily what is in the forms. It does not mean the activity has not taken place, but this is simply the act of passing the information to the Voluntary Assisted Dying Board. It is a very important governance process that takes place, so it is important that there is a penalty for not lodging those forms. There are obviously the other aspects of the activities that the forms describe and that is captured elsewhere.

Mr Z.R.F. KIRKUP: I could be wrong, but on my count there are probably seven or eight forms. The process is relatively straightforward for the first request. From when the coordinating practitioner coordinates the first assessment to the final request and the administration decision, I can see seven forms, but I could be wrong about the process. They are all reasonably important gates to get through. The board is required to provide a permit or something like that, which we understand, and the board is there to monitor the functions. There is a penalty of $70 000 in total for not returning those seven forms, and if some are entirely missed in the process, that is all. What will be achieved by the outcome if this is successful is quite significant. A fine of $10 000 seems slightly small compared with the rest of the penalties in the bill. I was genuinely very surprised when I was going through the bill and I got to page 70, as I had seen a lot of very strong penalties, and all of a sudden there was a penalty of just 10 grand for the failure to return the form. It is important for us as parliamentarians and for the board to function; it is central to the ability of the board to function.

Mr R.H. COOK: I can go to the list, if the member likes, but there are significantly more than seven forms.

Mr Z.R.F. Kirkup: But in terms of the process.

Mr R.H. COOK: In the context of the way this would be operate, a portal system would be used. A person would not be able to go to the next form unless they had lodged the previous form. It is also consistent with the relevant penalties in the Victorian legislation. This is about making sure that we have a good pathway of information going to the board at any point in time, and it is important that the penalty reflects that, although many, many forms need to be lodged at any particular point in the process. The member described it as a gateway, and I think that is a good way to describe it. If someone did not lodge one form and then they lodged a form two stages down the process, the board would say, "Hang on, sunshine, you have missed a stage here." The way things will work in actuality is that a person will not be able to move through the portal unless they do so sequentially, but, in any event, the board would be able to raise red flags very quickly.

Mr Z.R.F. KIRKUP: I appreciate that, minister. We are having this conversation about there being a portal, and because of that the mechanism makes a lot more sense. I hope that the clinical expert panel develops this, because it makes a lot more sense to me in terms of following the journey. I envisaged this scenario while going through the legislation. I know 18 forms are prescribed, but when I was talking about the seven, it was as if there was a clear journey. People do not realise that there is further contact, administration decisions and all that sort of stuff in the 18 forms captured by this clause. I think the portal makes perfect sense and I appreciate the minister's clarification.

The ACTING SPEAKER: I take that as a comment, member.

Ms M.M. QUIRK: As the minister explained, it is contemplated that the CEO will set up a portal and these forms will be transmitted electronically. Is that the case?

Mr R.H. COOK: Potentially, yes. There is lots of nodding around the room. I think it would be envisaged that it would be on the basis of an online arrangement, yes.

Ms M.M. QUIRK: That probably obviates the concerns I had about receipt.

Mr R.H. Cook: Yes.

Ms M.M. QUIRK: Given that answer, I am intrigued. Clause 21(1), for example, states —

> Within 2 business days after deciding to accept or refuse the first request, the medical practitioner must complete the approved form … and give a copy of it to the Board.

That kind of language would not be used if a person was entering the form electronically. I am wondering whether that is a term of art or whether it is just drafting that contemplates that hard copies may be sent. What is the story there? Obviously, it is relevant, as it is one of the contraventions listed in clause 107.

Mr R.H. COOK: Yes. In a modern health system, I think we envisaged that it would be an electronic transmission. I guess we use language like "a copy of" because, ultimately, there may be a situation in which, if something is down, or some other circumstance, there would need to be a physical copy. But in the modern context, we would expect all this to be undertaken online.

Clause put and passed.

Clause 108 put and passed.

Dr D.J. Honey: Can we slow down, please?

The ACTING SPEAKER (Ms J.M. Freeman): No. You have been sitting here. If you have a problem with the Chair, move a dissent.

Clause 109: Court to notify CEO of conviction of offence under Act —

Mr Z.R.F. KIRKUP: I am keen to understand, when the court convicts a person of an offence as is described in clause 109, does the minister imagine that other notification processes would occur outside that? I realise that a lot

of the legislation we have before us is the bare minimum, as the minister described it; he hoped that there might be more. Does the minister imagine that he would be informed of that on a regular basis? Does he think that Parliament would be informed of that on a regular basis? I realise that it might be captured in the annual reports, which, of course, occur annually. Ultimately, the minister will be in charge of the operation of the act. Does the minister think that it would be important to make sure that he was made aware of these convictions?

Mr R.H. COOK: This minister would expect to be told. Obviously, that is up to the chief executive officer and the minister in terms of their relationship. This clause requires a court to send the CEO notice of a conviction and the penalty imposed when the court convicts a person of an offence under the act. It is important for the CEO of the Department of Health to be kept abreast of convictions pursuant to the Voluntary Assisted Dying Act, particularly as the CEO has investigation and enforcement functions under the act. Furthermore, even when a person is found not to be guilty of an offence under the act, they may be subject to disciplinary proceedings, professional misconduct or unprofessional conduct.

Mr Z.R.F. KIRKUP: I thank the minister. The member for Hillarys and I were talking while the minister was conferring with his advisers, and the member for Hillarys provided a not dissimilar response in respect of where we are going with that. There is nothing to prohibit the minister from having that relationship and having that line of sight into what occurs. Just by way of some context for my concern about this, I was quite surprised that, aside from the annual report, the Parliament would not be more involved in this legislation. I look at other serious acts like the terrorism act, the CCC act or something like that under which there are consistent regular—quarterly—notifications to the Parliament of very simple data. We would expect the Parliament to be made aware very quickly of offences, not on a real-time basis, but in terms of reporting. Is there any reason the minister has not considered, apart from annual reports, enshrining more regular updates on things like offences? That is something that, as legislators, we would have expected more comfort on. I am keen to understand why that has not been pursued by the minister.

Mr R.H. COOK: It does not preclude those activities taking place. Ultimately, it comes down to the court about whether the information is publicly available in relation to the conduct of court proceedings. But there is nothing to stop the minister of the day publishing information more frequently. Obviously, it is appropriate that the annual report—which we all rely upon—provides that once-a-year information, but there would be nothing to stop Parliament from requesting that information or a minister publishing it more frequently.

Mr Z.R.F. KIRKUP: I appreciate that, minister. My concerns particularly related to clause 105 with regard to the disclosure information. That exempts the court from providing information but does not necessarily exempt the Parliament from providing information that is acquired as part of the function of the legislation. I appreciate that the minister has not effectively given an undertaking, but we can at least ask questions on it. I appreciate the assurances, I suppose, of the minister that nothing would preclude that from occurring.

Ms M.M. QUIRK: I am a little puzzled about the need for this clause. I would have anticipated that the chief executive officer would, for example, need to supply documentation for the purpose of evidence for court proceedings. I am having difficulty contemplating a prosecution being launched without the CEO having at least been informed, because he or she would need to provide information and relevant material that would form part of the prosecution.

Mr R.H. COOK: The member is quite right. It would be an unusual situation, but it might be, for instance, that the investigation was instigated by the police, not the chief executive officer. But one would imagine that if they are activities undertaken under this legislation, there would probably be a request from police at some point in time. I am pleased that it is here just to make sure that we close the loop.

Ms M.M. QUIRK: Lastly on this, I gather "CEO" includes the CEO or his delegate?

Mr R.H. COOK: Yes.

Clause put and passed.

Clause 110: Who may commence proceedings for simple offence —

Mr P.A. KATSAMBANIS: Clause 110 is headed "Who may commence proceedings for simple offence". Can the minister define at the outset what is a simple offence?

Mr R.H. COOK: I am happy to provide the information. The member will probably be familiar with it. I am informed that a simple offence is defined in the Criminal Code. They are offences such as not lodging a form, which has a fine of up to $10 000. From that perspective, it is those types of offences. Simple offences are defined in the Criminal Code.

Mr P.A. KATSAMBANIS: This raises a number of issues, one of which I raised with the Premier when he was at the table and we were dealing with the penalty provisions. Why were some of these offences not simply incorporated into the Criminal Code? The Premier indicated that that was not under consideration by the

government, and that is fair enough. The second and more important issue is that there are a number of definitions throughout the bill. Clause 5 in division 3 of part 1 has a number of definitions that refer to other acts. For instance, "health service" has the meaning given in section 7 of the Health Services Act 2016 and "medicine" has the meaning given in section 3 of the Medicines and Poisons Act 2014. I would imagine that if we were to use a definition drawn from the Criminal Code, a definition of simple offence that refers to the Criminal Code would have been included on page 8 of the bill between the definitions of "self-administration" and "supply". Otherwise, everyone is scratching around. These offences are not included in the Criminal Code. If we wanted to refer to a term that is defined in the Criminal Code, good drafting practice would have included a definition. I know that we have passed that clause, but I ask the minister whether he would give consideration to either providing a definition in this clause or, at least before the bill goes to the other house, giving consideration to defining "simple offence" in clause 5, "Terms used".

Mr R.H. COOK: I am not a lawyer, but I am informed that the concept of a simple offence is quite a familiar one in drafting legislation. This clause is about those sorts of offences that would be appropriate for the CEO to commence proceedings for, as opposed to, for instance, the DPP or WA police. It is consistent with the Medicines and Poisons Act, under which the CEO or the delegate is primarily the decision-maker for prosecutions, and the medicines and poisons regulations branch would conduct investigative work and then make a prosecution recommendation to the CEO or delegate. From that perspective, it is consistent with current laws that work within this context. I appreciate that the member might have a different view about the drafting style or arrangements, but we think it is perfectly appropriate.

Mr P.A. KATSAMBANIS: It is not simply the drafting style. The drafting style leads to interpretation of the legislation. This legislation contains a series of offences. They are quite contained; it is not as though there are thousands of them. Part 6 has the offences. Can the minister indicate to the house for the record, for the public and for everyone who will use this legislation which of those offences are to be deemed to be simple offences and which are not?

Mr R.H. COOK: Member, it is for any of those offences that do not involve imprisonment, such as board forms and things of that nature. I am happy to come back tomorrow morning with a complete list to clarify that for the member. I am further advised that under clause 98, "Unauthorised administration of prescribed substance", a person commits a crime if the person administers a prescribed substance to another person. When the offence is described as a crime, it is not a simple offence in that context.

Mr P.A. KATSAMBANIS: What is it then? Is it when the offence is described as a crime, or when the offence does not attract a penalty of imprisonment? If it is the latter, the only one I can see in these offences is in clause 107, which would have been just as simple.

Mr R.H. Cook: By way of interjection, it is the former, not the latter.

Mr P.A. KATSAMBANIS: It is the former.

Mr R.H. Cook: It's those offences not described as crimes.

Mr P.A. KATSAMBANIS: It is those offences not described as crimes. There are a few of those that are not described as crimes but still attract a penalty of imprisonment. I am happy for the minister to come back, as he indicated, tomorrow morning, or at some stage tomorrow, and give me an exhaustive list and then I will carry on with my other questioning around this.

If the prosecution is going to lie with the CEO or someone authorised by the CEO, is it the intention that a prosecution unit will be set up within the Department of Health, or is the CEO likely to authorise the Director of Public Prosecutions, or police prosecutors for that matter, to be the authorised prosecutors under this clause? What is the intention for how it will work in practice?

Mr R.H. COOK: I do not know whether the intention of the chief executive officer is to have a specific unit. But, obviously, the chief executive officer already has obligations under the Medicines and Poisons Act, the Misuse of Drugs Act and the Public Health Act. For instance, the medicines and poisons regulation branch conducts investigative work and then makes a prosecution recommendation to the CEO or the CEO's delegate. That is in accordance with section 122 of the Medicines and Poisons Act. Other positions delegated under section 102 of the Medicines and Poisons Act include the Chief Health Officer, the deputy Chief Health Officer and the Chief Pharmacist. After an investigation, the CEO of Health may authorise the WA Police Force or the Director of Public Prosecutions to commence a prosecution for a simple offence, but the department already has significant infrastructure to manage these things. It could be that within those regulatory units, it has a unit specifically set up for this, but that is a decision for the CEO.

Mr P.A. KATSAMBANIS: Perhaps the minister might seek some advice, if he can, between now and tomorrow on that as well. As the minister described, he is the Minister for Health and he has a lot more understanding of the way the department is structured. But, as I understand it, those prosecutorial units the minister mentioned

are effectively standalone units that deal with issues they are already tasked with, so the people under the Medicines and Poisons Act deal with medicines and poisons and the people under the Public Health Act deal with public health. Will this job require a new unit or will one of the existing units be tasked with doing this job?

Mr R.H. COOK: There would not necessarily be a dedicated unit across the act. Obviously, this bill involves heavy interaction with the Medicines and Poisons Act, so obviously there would be crew in there associated with that. Other areas are to do with the conduct of medical practitioners and so forth. The CEO may wish to set up a dedicated unit, but I suspect that that person would simply bring teams together out of the specific units that have expertise in those areas.

Ms M.M. QUIRK: The explanatory memorandum, in relation to clause 110, states —

> This clause makes clear that a prosecution for a simple offence under this Act can only be commenced by the CEO or by a person authorised by the CEO to do so.
>
> This clause is consistent with section 122 of the *Medicines and Poisons Act 2014* (WA).

This is what the minister has already told us. However, section 122 of the Medicines and Poisons Act does not refer to simple offences. I suspect that that may well be because all the offences under that act are simple offences, but it says that a prosecution for a simple offence under this act may only be commenced by the CEO or person authorised by the CEO. Clause 110 of this bill and section 122 of the Medicines and Poisons Act, although they are consistent, do not use similar wording. I also want to know what the rationale is for the CEO having to authorise this prosecution.

Mr R.H. COOK: The member is quite correct. They do use different language, but that does not mean that they are not consistent. I did not catch the final question that the member asked.

Ms M.M. Quirk: I am still not sure of the rationale behind the CEO's signing off on a prosecution before it is commenced.

Mr R.H. COOK: I am advised that these are lower order offences in this bill, so it is appropriate for the CEO to be the investigator, rather than some different authority, such as the police or the Director of Public Prosecutions.

Ms M.M. QUIRK: There is no problem, administratively, with the CEO understanding and being made fully aware of what is proposed to be done in the way of prosecution action. The problem I have with this clause is that it then becomes an element that the prosecution must go along with a bit of paper saying that there is this approval. Although that is easily done, it is also sometimes forgotten. I understand why it would be administrative practice that the CEO needs to be made aware of all prosecutions and administratively approve of them, but I do not understand why this formal provision needs to be in the bill.

Mr R.H. COOK: It is not an extraordinary clause. It is similar to clauses used in other aspects of simple offence legislation within the government. The CEO is the best person to commence prosecutions. It is good that we have it defined around the CEO so there is no confusion about who has responsibility and carriage of these things. It is just to maintain clarity about who to go to to get these things happening.

Mrs A.K. HAYDEN: I want to follow on from the comments of the member for Hillarys about simple offences. The minister has said that he is going to table the simple offences. That is great because, unlike him, I am not aware of the simple offences list and we have not been able to get it from the minister this evening. I appreciate that the minister will make that available tomorrow. Can the minister also indicate which clauses in the bill the CEO has jurisdiction over to pursue this? Again, it is not outlined in the legislation, so someone who is going back over this legislation down the track can flick through and see which are relevant and not relevant. The legislation has it in all the other clauses so readers can flick back and forth to the clauses that they are relevant to. It would be appreciated if that could be included as well.

Mr R.H. COOK: Yes. Just to clarify the member's request, I assume she wants those simple offences that the CEO will be responsible for—not all the things that the CEO will be responsible for —

Mrs A.K. Hayden: No, the simple offences.

Mr R.H. COOK: — and the clauses in which they occur.

Mrs A.K. HAYDEN: I think the minister answered this in reply to the member for Girrawheen. I am sorry if I did not hear it correctly, but can anyone other than the CEO or someone the CEO authorises prosecute any simple offences? The CEO can and if he or she authorises a person, they can. Is there anyone other than that who can prosecute these?

Mr R.H. COOK: As I explained to the member for Girrawheen, the CEO is the go-to person to begin the investigation. The CEO will be able to authorise the Western Australia Police Force or the Director of Public Prosecutions to commence prosecutions for a simple offence. As I said, the lower order offences under the act would not ordinarily pique the interest of the Western Australia Police Force. They are offences that are not described as crimes, so it is appropriate that the CEO will have carriage of those offences.

Mrs L.M. HARVEY: I seek further clarification from the minister, because that is not what the clause states. It states —

> A prosecution for a simple offence under this Act can only be commenced by the CEO or by a person authorised by the CEO to do so.

The clause states that it will not be just the CEO who can commence prosecutions for a simple offence. It can also be a person who the CEO may authorise. We would like to understand who might those individuals be.

Mr R.H. COOK: It will not surprise the member to hear that the Chief Health Officer, the Deputy Chief Health Officer or the Chief Pharmacist are likely go-to people. The chief executive officer may authorise the Western Australia Police Force or the DPP to commence a prosecution.

Mr Z.R.F. KIRKUP: From the minister's own awareness, are there any other circumstances in which the CEO can initiate investigations or prosecutions at the moment? I realise that for health practitioners, the Australian Health Practitioner Regulation Agency can do that. I am keen to understand whether there are similar simple offences for which the CEO can initiate.

Mr R.H. COOK: Yes, member; under the Medicines and Poisons Act and the health act. The member would be surprised what gets captured under the health act—everything from the storage of food through to sewage and all manner of activities.

Clause put and passed.

Clause 111: Time limit for prosecution of simple offence —

Mrs A.K. HAYDEN: This is a very quick one, minister. I will ask two questions in one so that we do not need to keep getting up and down. Firstly, why is a time limit included? Can the minister explain why there is a time limit in the bill for a prosecution to commence within two years after the day on which the offence is alleged to have been committed? Secondly, subclause (2)(b) states —

> The prosecution notice need not contain particulars of the day on which the offence is alleged to have been committed.

I am finding that to be a bit of a conflict. Can the minister tell me, firstly, why there is a time limit of two years; and, secondly, why, under subclause (2)(b), no day is required to be put on the prosecution notice?

Mr R.H. COOK: This clause sets out the time limit for the prosecution of a simple offence. The prosecution must commence within two years after the day on which the offence was committed or on which the evidence of the alleged offence first came to the attention of a person authorised under clause 110, who is otherwise known as the CEO. To answer the member's question, the period of two years is consistent with the Medicines and Poisons Act. The time limit relates to when the alleged offence first came to the attention of the person and not necessarily to when the offence took place.

Mrs A.K. HAYDEN: What if it does not come to their attention until two years and one day after the offence? Are they able to prosecute that or is it just two years regardless? Again, there are two different lines there.

Mr R.H. COOK: It is self-evident. If it is two years and one day after the alleged offence came to their attention, they cannot be prosecuted.

Clause put and passed.

Clause 112: Protection for persons assisting access to voluntary assisted dying or present when substance administered —

Mr Z.R.F. KIRKUP: Can the minister give me some guidance of how paragraph (a) might reconcile with previous offences relating to inducement or coercion? This obviously is about someone who has acted in good faith. It states —

> in good faith, assists another person to request access to, or access, voluntary assisted dying in accordance with this Act; …

The bill includes clauses to stop coercion and things like that. Is this just a protection clause for somebody who is trying their best as part of the functioning of the legislation?

Mr R.H. COOK: This clause provides a protection from criminal liability. This clause applies to a person who in good faith assists or facilitates any other person to access the voluntary assisted dying process in accordance with this bill. This clause also applies to persons who are present at the time of the administration of the prescribed substance. The patient's families, friends or carers support the patient during the voluntary assisted dying process and should be free to do so in accordance with this bill.

Mr Z.R.F. KIRKUP: Thank you, minister. I refer to paragraph (b), which is about a person being present when self-administration occurs. I am trying to understand situations in which this clause might be applicable. There could be a whole number of people in the room. If the legislation is not followed, will this still provide them with

protection from criminal liability? If a patient goes about the process in a manner that is contrary to the bill as it stands at the moment, or the practitioner goes about it in a manner that is contrary to the bill, the people who are present are not expected to understand the full content of the legislation simply by virtue of the fact that they are there. They are not expected to understand it, and the bill will provide them with the necessary protection from any legal issues. Further to that, they could not be defined therefore as an accessory after the fact or anything like that; is that correct? I seek the minister's satisfaction.

Mr R.H. COOK: Yes, that is the precise intent and effect.

Clause put and passed.

Clause 113: Protection for persons acting in accordance with Act —

Mr Z.R.F. KIRKUP: I am keen to understand how the provisions in clause 113(3) will be ascertained. What will happen if the whole way through there are persistent issues with a practitioner, for example? How will we ascertain whether "the doing of the thing" is not regarded as a breach of professional ethics and things like that? When I was going through this clause, I did not quite understand this. Maybe that is because I do not understand the intricacies of professional misconduct for health practitioners. I am keen for the minister to provide more clarification on subclause (3) if possible.

Mr R.H. COOK: This is to provide general protection from criminal liability under the Voluntary Assisted Dying Act—civil liability and professional liability. The proposed section protects a person who in good faith does a thing in accordance with the Voluntary Assisted Dying Act, or believes on reasonable grounds that the thing is done in accordance with the Voluntary Assisted Dying Act.

Mrs A.K. HAYDEN: Can the minister maybe give an example of what the "thing" would be—just one?

Mr R.H. COOK: Given the strict process in the bill and the various points to check compliance, it will be difficult for a medical practitioner to deviate from the bill without a purposeful act, thus noncompliance in error is likely to apply only when there has been a minor administrative error, such as in completing forms and things of that nature. It is simply to protect someone in the event that they, as I said, believe on reasonable grounds that the thing they are doing is in accordance with the Voluntary Assisted Dying Act.

Clause put and passed.

Clause 114: Protection for certain persons who do not administer lifesaving treatment —

Mr P.A. KATSAMBANIS: Clause 114 provides protection for a range of people who are defined as registered health practitioners, or ambulance officers or some other person who has a duty to administer lifesaving treatment to another person. The protection is provided when those people do not provide lifesaving treatment because they are under the impression that the person does not want that treatment. At the outset I want to, firstly, canvass the operation of subclause (2). That protection is provided —

> … if a protected person, in good faith, does not administer lifesaving treatment to another person in circumstances where —
>
> (a) the other person has not requested the administration of lifesaving treatment; and
>
> (b) the protected person believes on reasonable grounds that the other person is dying after self-administering or being administered a prescribed substance in accordance with this Act.

The protection applies if both those tests are satisfied. I want to double-check with the minister that that would mean in a circumstance in which someone, let us say, self-administers, and after having self-administered changes their mind and rings 000 to say, "Send an ambulance. I've taken this stuff. I've changed my mind. I don't want to do it." The fact that they have requested treatment would negate all this, and the lifesaving people—the registered health practitioner, the ambulance officer or the other person with a duty to administer lifesaving treatment—would then have to do what they ordinarily do and provide that treatment. Is that right?

Mr R.H. COOK: Yes, that is spot on. If a patient changes their mind and requests life-sustaining measures, health practitioners or ambulance officers would be required to provide life-sustaining treatment as able. It is a tricky situation, is it not, but obviously it is an important clause to make sure that we protect these officers.

Mr P.A. KATSAMBANIS: This protection is around not administering lifesaving treatment, and it covers both criminal and civil protection as well as anything considered to be a breach of ethics, standards or professional misconduct and the like, and that is good. That is as it should be. However, I want to countenance an opposite scenario.

Mr R.H. Cook: I think I know where you are going, member.

Mr P.A. KATSAMBANIS: Yes. What if somebody self-administers and a child, a visitor or perhaps a carer or anyone comes around and finds this person unconscious, sees a bottle of pills, or may not even see a bottle, does

not really twig that this was self-administration of a prescribed substance under this legislation and rings the ambulance. The ambulance comes along and the ambulance officer administers lifesaving treatment in good faith, and unbeknownst to both the ambulance officer and the good Samaritan who rang the ambulance, the patient did not want to be treated or revived. That may in some instances invoke civil liability on the part of the ambulance officer or that other person with the duty to administer lifesaving treatment. What sort of protections from civil liability would be afforded in those circumstances?

Mr R.H. COOK: This essentially protects a group of people who have a sworn duty to protect and provide lifesaving treatment. In the event that they come across a circumstance in which they would not reasonably know or be aware that the person is acting within the voluntary assisted dying legislation and they administer lifesaving treatment on this person—I think we are visualising a pretty bizarre scenario there, but let us just go with it for the moment—they would be protected because they are already protected under their own jurisdictions to administer lifesaving treatment, regardless of whether that person has separately sought to access voluntary assisted dying. The intent of this clause is to protect those persons from doing something that they otherwise would be professionally bound, and in some contexts legally bound, as a member of that profession, to undertake. It simply makes sure that they do not get prosecuted in that context because they are protected by the voluntary assisted dying legislation.

Mr P.A. KATSAMBANIS: I am not necessarily sure whether we are dealing with totally bizarre circumstances, because as we know from other jurisdictions that have self-administration, there are circumstances in which people self-administer enough substance to render themselves unconscious, but not quite enough to get to the point at which the substance kills them, and after some time they come back to consciousness. It does happen, so it is possible that someone could find a person who is unconscious and not dead in those sorts of scenarios. Irrespective, I take it from the minister's answer that the protection in the case that I outlined, the opposite to what clause 114 provides for, would come from the general protection of a person who has a duty to provide lifesaving treatment to another person. They would rely on that, whether it is a common law or some statutory protection. Does the minister believe that that duty exists anyway, so he did not need to provide any separate coverage of it in this legislation? Am I putting words in the minister's mouth or is that basically correct?

Mr R.H. COOK: No, that is absolutely correct. The member referred to subclause (1) of this clause. These are people who are registered health practitioners, ambulance officers or anyone else who has a duty to administer lifesaving treatment to another person. It is about protecting them from having to carry out that duty in this context.

Mr Z.R.F. KIRKUP: We are not there yet but I might take the opportunity to wish the member for Churchlands a happy birthday. We are not yet in the next day; we will wait a minute.

The SPEAKER: I think you should withdraw!

Mr Z.R.F. KIRKUP: I will not!

Minister, subclause (1)(c) states that a protected person means —

> a person (other than a person referred to in paragraph (a) or (b)) who has a duty to administer lifesaving treatment to another person.

Is there some other broader definition of occupations that might fall under this paragraph that the minister can provide some information on? I am imagining someone like a surf lifesaver, for example. Would they be captured under the legislation? When I raised this clause in the town hall meetings I did in my district, people were quite pleased that this particular clause is there. They were worried if they were an ambulance officer or someone like that—but in this case it was about their grandchildren—who performed lifesaving functions, otherwise are there other definitions of different occupations that the minister could provide us more information on who would not be covered as a registered health practitioner, are not an ambulance officer but might otherwise provide lifesaving treatment?

Mr R.H. COOK: It is the type of person the member is talking about: a surf lifesaver, a first aid officer, a firefighter, potentially a State Emergency Service officer—anyone who is required to provide assistance in certain circumstances that define their duties.

Mr Z.R.F. KIRKUP: Subclause (2)(b) states —

> the protected person believes on reasonable grounds that the other person is dying after self-administering or being administered a prescribed substance in accordance with this Act.

Taking away when a practitioner has done that administration, which is quite obvious, how would that be arrived at as a very quick decision-making process? I am conscious that it might cause myriad possibilities whereby people could suggest that the reason they did not administer lifesaving treatment might be because they thought someone was reasonably accessing the medication or substance. I am sure it has been thought through. I am just keen to understand what that might look like.

Mr R.H. COOK: Family members would say, "No, it is okay, this person is accessing voluntary assisted dying under the act. Here is a form; here is a doctor who says it." There are any number of circumstances in which after a person asks why they did not provide lifesaving treatment to the patient they would say, "They were surrounded by family and friends, all of who claimed this person was doing it as consistent with the Voluntary Assisted Dying Act". Then it would be pretty unfair to prosecute that person for not then having done it, given that all those people standing around would give them reasonable grounds to believe that the person was dying after self-administration.

Mr Z.R.F. KIRKUP: Just in case I was not particularly clear, this was just in relation to the self-administration option. I am conscious that if someone was not necessarily performing their function, they could simply claim that they thought the person was accessing the VAD substance. It might not be in the circumstances the minister described when they are surrounded by friends or family. That was it. I appreciate the minister has probably looked at that.

Mr J.E. McGrath interjected.

The SPEAKER: Put your shoes on please, member for South Perth.

Mr Z.R.F. KIRKUP: I could smell that.

There was some capacity for that which I was concerned about that the member for South Perth just described and the minister probably did not hear.

Clause put and passed.

Debate adjourned, on motion by **Mr D.A. Templeman (Leader of the House).**

House adjourned at 12.04 am (Thursday)