VOLUNTARY ASSISTED DYING BILL 2019

Committee

Resumed from 3 December. The Chair of Committees (Hon Simon O'Brien) in the chair; Hon Stephen Dawson (Minister for Environment) in charge of the bill.

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

Progress was reported after the clause had been partly considered.

Hon NICK GOIRAN: When we concluded yesterday evening, we were looking at clause 99(2) that indicates that a person commits a crime if the person, by dishonesty, undue influence or coercion, induces another person to, amongst other things, request access to voluntary assisted dying or access it. My concern was: what would happen if the person who had been induced died as a result of the inducement? As I understand the minister's explanation yesterday evening, the minister seemed to indicate that that would be captured by clause 100. Does clause 100 therefore capture all circumstances of voluntary assisted dying in the event of an inducement?

Hon STEPHEN DAWSON: For self-administration, yes, it does.

Hon NICK GOIRAN: If it is not self-administration, and a person has been induced, what offence will apply to the inducer other than clause 99(2), particularly if the person dies as a result of the inducement.

Hon STEPHEN DAWSON: I am advised that it is potentially captured by section 288 of the Criminal Code, which refers to a person being guilty of a crime if they procure, counsel and thereby induce, or aid another person in killing themselves. The penalty is life imprisonment.

Hon MICHAEL MISCHIN: I appreciate that observation, minister, because I was going to ask about the relationship between clause 99(2) and section 288 of the Criminal Code. The minister assured us that in the event that there has been some dishonesty, undue influence or coercion and a person is induced to access voluntary assisted dying, then notwithstanding that all the other necessities under the bill have been satisfied, the person who did the inducement would nevertheless be guilty of procuring a suicide within the meaning of section 288 of the code. Perhaps I should be a bit more specific. If it is of any assistance, I can pass over my copy of the Criminal Code so that the minister can take advice on it. Section 288 provides —

> Any person who —
>
> (1) Procures another to kill himself; or
>
> (2) Counsels another to kill himself and thereby induces him to do so; or
>
> (3) Aids another in killing himself;
>
> is guilty of a crime, and is liable to imprisonment for life.

That covers the field so far as it goes, but I want to make sure that there is no hiatus here and that if those circumstances are satisfied, notwithstanding that the bill provides that if someone follows all the procedures it is not a suicide, and notwithstanding that there is particular provision, it would nevertheless leave a person who induces by the means set out in clause 99(2) liable to conviction and punishment for an offence against section 288.

Hon STEPHEN DAWSON: The short answer, honourable member, is, yes; it would be a breach of section 288 of the Criminal Code.

Hon MICHAEL MISCHIN: Thank you. I take it that clause 99(2) is aimed more at inducement that does not lead necessarily to a death. Would that be correct?

Hon STEPHEN DAWSON: The member is correct.

Hon MICHAEL MISCHIN: Given that procuring a suicide or inducing someone to suicide carries life imprisonment—I may be a little rusty on the law—and an attempt to do so that does not succeed in causing that person's death would result in 14 years' imprisonment, why is this set at only seven years' imprisonment as a maximum punishment? Ought it not be something at least comparable to an inducement to get someone to kill themselves that is not successful?

Hon STEPHEN DAWSON: Honourable member, I answered this last night. It was the last comment I made before be broke last night.

Hon Michael Mischin: Sorry.

Hon STEPHEN DAWSON: That is all right. I will point it out briefly. I will not go into it in great detail because it is on the uncorrected *Hansard* from last night.

Hon Michael Mischin: My apologies.

Hon STEPHEN DAWSON: That is okay. The drafting team met with the Department of Justice to discuss the appropriate penalties. The drafting team took advice from the Department of Justice, the Western Australia Police Force, the Solicitor-General and the Director of Public Prosecutions in landing upon this penalty. I am advised it is consistent with sections 301 and 304 of the Criminal Code—so, offences causing someone to take poison or other noxious things. 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.

Hon MICHAEL MISCHIN: It is comparable to the maximum penalty for simple stealing, fraud—actually, I think with fraud, it is 10 years if it is someone over the age of 60 years—forging and uttering and those sort of offences. Nevertheless, the government has selected that. My only other question is: what is meant by induces another person to access; can the minister give an indication as to what that involves because it seems to be very broad and vague?

The CHAIR: President—I mean minister.

Hon STEPHEN DAWSON: Mr Chair, you are giving me status above my paygrade.

The CHAIR: Well above, yes.

Hon STEPHEN DAWSON: To access is to progress beyond the request and assessment process. It includes prescription and supply, to final administration.

Hon NICK GOIRAN: Earlier when the minister provided an explanation for clause 99(2), he indicated that if the elements set out in clause 99(2) are made out, but an additional element is present—that is, the person died as a result of the inducement—section 288 of the Criminal Code would capture that circumstance. If that is true, why do we need clause 100?

Hon STEPHEN DAWSON: I am advised that it is because we want a discrete offence in the bill similar to that in the Victorian legislation.

Hon NICK GOIRAN: If we want a discrete offence in the bill, why do we not have one similar to that sitting on the supplementary notice paper at 491/99?

The CHAIR: Member, are you proposing to move the amendment in your name on the supplementary notice paper at this point? If the member is going to canvass it, it really needs to be on the business in front of us.

Hon NICK GOIRAN: I am waiting for the minister's response before I decide whether to move the amendment.

The CHAIR: I will indicate to the chamber that we are not going to get into a debate on a mooted amendment, but I will allow a brief inquiry of the nature that the member has proposed.

Hon STEPHEN DAWSON: The reason is that this is the way that the drafters have drafted the bill and a decision has been made to include clause 100.

Hon NICK GOIRAN: I move —

> Page 66, after line 24 — To insert —
>
> (3) A person commits a crime if —
>
> (a) the person, by dishonesty, undue influence or coercion, induces another person —
>
> (i) to make a request for access to voluntary assisted dying; or
>
> (ii) to access voluntary assisted dying;
>
> and
>
> (b) as a consequence, the other person accesses voluntary assisted dying and dies.
>
> Penalty for this subsection: imprisonment for life.

The purpose of this amendment is to mirror what is currently found in the bill at clause 99(2). The same language applies; the only difference is that if someone induces a person by way of undue influence, coercion and the like to access voluntary assisted dying—in other words, they have been put under pressure to access it—and they die as a result, there will be a maximum penalty of life imprisonment. Members will see that precisely the same penalty applies at clauses 98 and 100. We agree that under clause 100, if a person uses dishonesty, undue influence or coercion to influence a person to self-administer the substance, they are up for a penalty of potentially life imprisonment. This issue was canvassed in the other place by the member for Hillarys in a dialogue with the Premier, who was filling in at the time for the Minister for Health. Interestingly, the response provided by the Premier to the same questions effectively asked by the shadow Attorney General and me were different. The Premier referred the member for Hillarys to section 273 of the Criminal Code, yet today we are told it is section 288. I do not think we can have confidence that all the offences have been adequately covered when the Premier of Western Australia

tells members in the other place that section 273 of the Criminal Code will capture things and today we are told that it is section 288.

Hon Michael Mischin: Section 273 is not an offence anyway.

Hon NICK GOIRAN: This was the advice of the very learned Premier of Western Australia to the member for Hillarys. Perhaps it was given at an inappropriate time of the day or morning; I do not know. In any event, the point is that if members intend to support clause 100 of the bill, there should be no problem supporting the amendment that currently stands in my name. It ensures that there is no gap. If somebody is put under pressure to access voluntary assisted dying—not just to self-administer, but in any circumstance—the person applying that pressure should be up for life imprisonment. This amendment would achieve that. In conclusion, I draw to members' attention the submission provided by the Law Society of Western Australia. I know that the minister now has a copy of it because it was kindly tabled by the shadow Attorney General yesterday. The Law Society states at 4.1.5 on page 8 of the submission —

> Arguably, the maximum sentence for clause 99(2)(b), which is substantially the same offence as clause 100, except that it may be committed in cases not involving self-administration, is inadequate, and should be the same as for clause 100.

For those reasons, I seek the support of all members.

Hon STEPHEN DAWSON: The government does not support this amendment to clause 99. I am advised that clause 100 adequately deals with inducement for self-administration. Clause 99 has a broader application, which also includes when practitioner administration is chosen. The offence in clause 99 of the bill is not substantially the same as at clause 100. Clause 99 deals with request for access and when an administration decision is made. Clause 100 specifically relates to self-administration when there is no intermediary. Practitioner administration has an intermediary—the practitioner—so it would not have the same penalty. I am advised that in relation to proposed clause 99(3)(b) that is unclear because a person could access voluntary assisted dying but die from natural causes rather than from the administration of the prescribed substance. I want to make the point that, as stated previously, the government formulated clause 99 in consultation with relevant agencies and the penalty reflects the penalties at sections 301 and 304 of the Criminal Code.

Hon NICK GOIRAN: Whatever agencies the government decided to consult with, it did not consult with the Law Society of Western Australia, because we just received its submission this week, which I understand the minister received yesterday. The other point that needs to be made is that the government's view seems to be that it is okay because there is an intermediary. If there is an intermediary—a consulting practitioner and an administering practitioner—who knows nothing about the inducement whatsoever, they can proceed along their merry way and inject the patient, having complied entirely with the act. What will happen if, unbeknownst to this intermediary that the minister referred to, the patient is under pressure? What does the minister propose should be the penalty if the patient is told by a family member, "If you don't go ahead with this, I'm going to kill one of the other family members"? What will happen if that kind of pressure is exerted on the person and the patient does not report it to anybody out of fear for the safety of their loved one and does not tell the intermediary, as the minister now likes to refer to him? The inducement is shocking and disgraceful, and imprisonment for life should apply. If the patient under all of those circumstances and pressure decides that they will not self-administer because they cannot cope with what is going on and they want practitioner administration, we are suddenly saying that clause 100 will not apply to them because they chose self-administration. There is nothing in the amendment before the chamber that is going to undermine anything in the bill. It is consistent with the advice of the Law Society and I seek the support of members.

Hon MICHAEL MISCHIN: I have sympathy for what is being proposed, because I see a hiatus. Under clause 100 we are looking at a crime being committed if I were, through dishonesty, undue influence or coercion to induce, say, Hon Nick Goiran, to self-administer. That carries life. It does not matter whether it results in his death; that is not an element of that offence. He may self-administer but not die, or he may stop short of the actual self-administration because he has second thoughts. There is no comparable provision as simple as that in clause 99. The closest it comes to that is at clause 99(2), yet that carries a penalty of a measly seven years' imprisonment. Again, death does not have to be an outcome under clause 99(2), but otherwise it seems to be aimed at the same mischief. Yet, the penalty is a fraction of what might be the case under clause 100. That is one of the points that the Law Society made in its submission tabled yesterday and circulated to the government last week. It says that arguably the maximum sentence for clause 99(2)(b), leaving aside Hon Nick Goiran's amendment, which is substantially the same offence as clause 100 except that it may be committed in cases not involving self-administration, is inadequate and should be the same as for clause 100. I wholeheartedly support that. If the government is not going to increase the penalty in clause 99(2) from seven years, I think it is proper that there be a provision that covers the field in proposed clause 99(3).

If the minister is concerned about the potential of proposed subclause (3)(b) capturing people when the deceased has died of natural causes rather than the administration of a substance, it can be cured by a small addition—with the words "and dies as a result thereof". I would have thought that that solves that problem of causation and it complements, at least insofar as there is a consequence to the inducement that has led to a fatal result, a sensible penalty, without having to resort, if necessary, to section 288 of the Criminal Code. Frankly, there is a very good argument for saying that the penalty of seven years should simply be increased and it would solve the problem, but if we are concerned about that and want to reserve the penalty of life imprisonment for something for which there is an actual consequence, I think we should support what Hon Nick Goiran proposes. My only caveat is that to solve the problem that the minister has raised, the words "assisted dying and dies" in proposed subclause (3)(b) ought to continue to provide "as a result thereof". Therefore, I move —

Paragraph (b) — To insert after "assisted dying and dies" —

as a result thereof

Division

Amendment put and a division called for.

Bells rung.

The CHAIR: Members, this is a unique situation —

A member interjected.

The CHAIR: Order. The member knows not to address the Chair when he is not in his place.

The voices that were sufficient to declare a no vote have apparently evaporated, and, for the record, I note that every member has moved to the right of the Chair. The situation now is that standing order 80 cannot be employed; therefore, this division will proceed. I do not know how we are going to do it without a teller for the noes. Given the unique circumstances, I am going to rule that the ayes have it. Will all members please resume their places.

Amendment on the amendment put and passed.

Point of Order

Hon Dr SALLY TALBOT: A small point of order, just while we are proceeding—I received several comments last night about the fact that the various speakers are leaving their microphones on while the minister is talking to advisers and while the Chair is talking to the clerks, and several conversations were picked up that were quite extraneous to the debate. I wonder whether it would be appropriate for you, Mr Chair, to remind people that, perhaps if they are talking privately they should switch their microphones off.

The CHAIR: There is no point of order, and you have all been told. Thank you, Hon Dr Sally Talbot. It is something to look out for, and I dare say it happens more often than we realise, so thank you for that point.

Committee Resumed

Hon RICK MAZZA: I rise to say that I am inclined to support this amendment. The way that I have considered this is that clause 100 refers only to someone who self-administers, and then obviously dies as a result. Clauses 99(1), (2) and 100 do not really cover a case of an administrating practitioner who has administered a substance to end a person's life but later evidence shows that the deceased was unduly influenced or coerced into voluntary assisted dying. In my mind, clause 100 is deficient because it deals only with self-administration, and clause 99(2) refers only to coercion, but not coercion resulting in death. On that basis, I am inclined to support Hon Nick Goiran's amendment to insert proposed subclause (3).

Hon ALISON XAMON: I rise to indicate that I have some sympathy for this amendment, but I am still listening to the debate as it unfolds. We need to remember that we are attempting with this legislation to enshrine the principle of individual choice, which we should cherish, and ensure that people are genuinely consenting to voluntary assisted dying. We have gone to a great amount of pain to do this and reinforce how important it is for people to have that personal choice. In the course of my second reading contribution I expressed my concerns about the way that coercion could occur, partly around elder abuse, but also for people with disability, who had expressed deep concern to me about the way coercive factors can work in their lives, and how important it is for them that we ensure that we have appropriate safeguards. We have incorporated a number of processes in this bill to ensure some oversight by practitioners to make sure that coercion does not occur, and we have debated those at length. But it strikes me that we need to look at the penalties that will apply when those safeguards are bypassed and problems emerge. It is important that, as much as possible, this legislation provides disincentives for anyone attempting to abuse its provisions. I remind people who have been lobbying for a very long time for these provisions that it will take only one person to effectively be murdered through these provisions to potentially bring this entire regime

tumbling down. I would think that anyone who is advocating for voluntary assisted dying would want to make sure that these provisions are being protected and that every measure is taken to avoid abuse.

We have strong penalties for what we call the "murder offences", and it is very important that we do not differentiate too much between the penalties that various murder offences attract. It is problematic to talk about murder as defined in the Criminal Code when attracting a life sentence, but then murder in another circumstance, such as the one potentially foreseen here, being of somehow lesser status. I have stood in this place on multiple occasions and talked about industrial manslaughter and said that, as far as I am concerned, manslaughter, in this instance, whether it occurs at work or in other settings, should not be differentiated. Ultimately, if someone dies and someone could have or should have prevented that, there needs to be commensurate penalties. The same applies here. I have always argued that the same penalty should apply to industrial manslaughter as that which applies to regular manslaughter; therefore, I say that murder as it is effectively articulated here, needs to be replicated with our regular murder provision. Indeed, I see this as an important safeguard to maintain the entire regime of voluntary assisted dying, because it is a very, very strong deterrent. The sorts of situations I can foresee in which this might occur are when someone who might potentially be the recipient of a large amount of money puts undue pressure on someone to avail themselves of this. They may be very careful and scrupulous about keeping themselves out of the formal process of voluntary assisted dying so that they never come to the attention of the people who in good faith administer this process; nevertheless, evidence may come to light later that the person who died did not really wish to die but felt that they had no choice. I think in that situation, it is murder and we need commensurate penalties. I am very sympathetic to the principle behind this. I see it as an important protective factor of the regime as a whole, but it is also critical that we do everything possible to make sure that people do not access voluntary assisted dying if they really do not want to.

Hon CHARLES SMITH: I fully urge members to agree with the amended amendment before us. I fully agree that this offence and clause 99 should be regarded as a serious offence. In the current format, there is an option for a summary conviction, and that means that in the real world in a court process, for example, with early pleadings of guilty, a demonstration of remorse for the offence committed, or perhaps it is a first offence, there is a very real possibility that an offender could walk away with a minimal punishment or a fine for trying to get someone to take their own life. I think that is wholly unacceptable. I urge members to consider the amended amendment to make this a serious offence with life in prison.

Division

Amendment, as amended, put and a division taken, the Deputy Chair (Hon Martin Aldridge) casting his vote with the ayes, with the following result —

Ayes (16)

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

Noes (18)

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

Amendment, as amended, thus negatived.

Clause put and passed.

Clause 100: Inducing self-administration of prescribed substance —

Hon ADELE FARINA: Can the minister explain whether this offence will cover the situation in which a person prepares the substance for the patient to take?

Hon STEPHEN DAWSON: No, clause 100 does not cover the preparation.

Hon ADELE FARINA: Last night, when I asked the minister this question about clause 98, he told me that, depending on what the substance is, the issue of preparation might be covered under the Misuse of Drugs Act or the Medicines and Poisons Act. I have reviewed both of those acts and neither of them deal with the preparation of the substance. I just want to get some clarification. Is it the case that it is not an offence to prepare the voluntary assisted dying substance on behalf of a patient?

Hon STEPHEN DAWSON: I am advised that to prepare, one must have possession of the substance. If a person is not authorised to prepare, they are not authorised to possess. Possession is criminalised by the Medicines and Poisons Act and the Misuse of Drugs Act by way of consequential amendments. Furthermore, I am advised that section 288 of the Criminal Code may also apply.

Hon NICK GOIRAN: Will the prosecution have more or fewer elements to prove if a charge is preferred under clause 100 of this legislation or section 288 of the Criminal Code?

Hon STEPHEN DAWSON: I am told there is no real difference to what has to be proved—so in either case the inducing has to be proved.

Hon NICK GOIRAN: The minister will see here that, as in the previous clause, we introduced this concept of undue influence. The minister will recall that earlier in our debate on the bill, on several occasions, including under the principles, I suggested that it might be appropriate that we use that terminology. The government resisted that; as I understood it, the explanation was that the language was too legalistic. I notice that the principles as originally proposed by the government say that there is a need to protect persons who may be subject to abuse, and thanks to a very good amendment by Hon Martin Pritchard, that now says that there is a need to protect persons who may be subject to abuse or coercion. In this provision, we talk about both undue influence and coercion. What is the difference between the two?

Hon STEPHEN DAWSON: Honourable member, coercion may be threats. Undue influence is more subtle, so it could be persuasion by someone in a position of influence—for example, a guardian or parent. My advisers tell me that it is appropriate to include undue influence in an offence provision in the bill. What I said previously was that "undue influence" is legalistic terminology that is reflected in the offence provisions of this bill. It denotes when a person uses improper influence that deprives another of freedom of choice or substitutes another's choice or desire for the former person's own. It is a legal term that is understood by the learned profession; however, it is less familiar to the general community.

Hon NICK GOIRAN: The minister indicated earlier that one of the reasons that the government does not believe it is necessary in clause 100 to go beyond self-administration is that a very important intermediary will be involved. I understood that the minister indicated a practitioner would be involved as an intermediary. Given that that will be the only thing standing in the way of what would otherwise be a crime under clause 100, will it be very important for the intermediary to understand where undue influence or coercion might be present so that they might be able to report such action to the police?

Hon STEPHEN DAWSON: The answer is yes, and there will be training on this as part of the implementation phase.

Hon NICK GOIRAN: I just want to alert the minister now that he has said yes to that answer. We will pick up this conversation again when we get to clause 158. I look forward to the minister's support at proposed amendment 74/158, but we will deal with that at that time.

Hon MICHAEL MISCHIN: I just want the minister to confirm, in light of what has happened with clause 99, that although under clause 100 it is a crime punishable by life imprisonment for a person through dishonesty, undue influence or coercion to induce another to self-administer a prescribed substance, there is no comparable offence if a person by dishonesty, undue influence or coercion induces another person to be administered a prescribed substance.

Hon STEPHEN DAWSON: I am advised that that would be a breach of section 288 of the Criminal Code.

Hon MICHAEL MISCHIN: Why is it not thought fit to have a like offence to clause 100 in this bill—a person inducing another person to be administered a prescribed substance—carrying a penalty of life imprisonment?

Hon STEPHEN DAWSON: Honourable member, that was discussed in some detail at clause 99, so I do not think it is appropriate to answer that again.

Clause put and passed.

Clause 101: False or misleading information —

Hon NICK GOIRAN: Who are the persons captured by clause 101? For example, could a nurse practitioner be captured; and, if so, what are the forms, declarations or other documents that nurse practitioners are connected with under this bill?

Hon STEPHEN DAWSON: The Voluntary Assisted Dying Board will rely on the information provided in the various forms, records and statements, made under the bill, to carry out a number of functions. Thus, the information provided must be accurate. Furthermore, to maintain the integrity of the VAD process, it is vital that accurate information is provided between the patient and the practitioner. The forms are any and all required to be completed

under the bill. For a nurse practitioner, these will be the practitioner administration form, the practitioner disposal form and, in some cases, it could be the administering practitioner transfer form.

Hon NICK GOIRAN: If a medical practitioner injects a person with a prescribed substance, in compliance with the requirements of this bill, and it results in the death of that person, would it be misleading in a material particular—as the phrase is put in clause 101—for the medical practitioner to report that death as a natural death?

Hon STEPHEN DAWSON: If a practitioner reports such a death as from natural causes to the Voluntary Assisted Dying Board, that would be misleading. It is only misleading if the practitioner provides false information, not information as required to be provided lawfully.

Clause put and passed.

New clause 101A —

Hon CHARLES SMITH: I move —

Page 67, after line 18 — To insert —

101A. Medical practitioner or other person not to be advantaged or disadvantaged in relation to voluntary assisted dying

(1) A person commits a crime if the person gives or promises any reward or advantage (other than reasonable payment for the provision of health services or other relevant services), or causes or threatens any disadvantage, to a medical practitioner or other person —

(a) because the medical practitioner or other person has done anything referred to in subsection (2); or

(b) for the purpose of inducing the medical practitioner or other person to do anything referred to in subsection (2).

Penalty for this subsection: imprisonment for 7 years.

(2) Subsection (1) applies to the following —

(a) participating, or refusing to participate, in the request and assessment process;

(b) prescribing, supplying or administering a voluntary assisted dying substance;

(c) refusing to prescribe, supply or administer a voluntary assisted dying substance.

(3) A person to whom a reward or advantage is given or promised as referred to in subsection (1) is not entitled to retain or receive the reward or to exercise the advantage, whether or not the person knew of the intention to give the reward or advantage, or the promise, at the time that the person did the thing referred to in subsection (2).

Despite the size of this proposed new clause, it is a very short and straightforward amendment and new offence that I believe will plug a hole in this legislation by introducing another safeguard and criminal offence. Coincidentally, last night I received an email from a constituent who reminded me of my stance on crime, and law and order issues. She sent me a snippet of a speech I gave some years ago. I will read out a couple of sentences from that speech —

> Our communities want to see more robust sentencing from magistrates and judges …

I am still firmly of that opinion. I concluded that short speech by saying —

> I believe individuals should be held fully responsible for their actions. Committing crime is fundamentally a matter of rational choice.

I still firmly believe in what I said some years ago. The new clause I propose aims to prohibit people from seeking to influence the actions of a medical practitioner or other person in relation to participating, or indeed refusing to participate, in the request and assessment process; or prescribing or supplying or administering a voluntary assisted dying substance; and also refusing to prescribe, supply or administer a voluntary assisted dying substance. I believe this amendment will plug a hole in the legislation that leaves it open to being abused. Experience shows that people take advantage of holes or gaps in legislation. I urge members to consider this particular gap and how this amendment will fill that and provide yet another safeguard.

Hon STEPHEN DAWSON: The government is not supportive of this proposed new clause. The provision melds together a suite of offences that are better left independent of each other. Furthermore, these actions are already covered by existing legislation and, as my advisers tell me, with more appropriately targeted penalties.

Hon NICK GOIRAN: I listened to Hon Charles Smith and when I read the amendment I did not find anything objectionable in it. My question to the minister is: is it already covered somewhere else in the bill? Can the minister indicate to what extent the amendment is duplicated in the bill?

Hon STEPHEN DAWSON: I did say other "legislation"; essentially it is covered by the Criminal Code. I will give some examples. If a practitioner is being bribed to administer the substance to a patient, the briber could be caught under section 273 of the Criminal Code for a lot longer than seven years. Section 273 of the code might apply if the medical practitioner did something as a result of being offered a reward or advantage, which hastened the death of the patient. The medical practitioner and the briber could be charged with unlawful killing and a penalty of life imprisonment could apply. In the case of the briber, he or she may have arguably procured the commission of an offence pursuant to section 7 of the Criminal Code. The threat aspect of the proposed offence is adequately covered by sections 338, 338A and 338B of the Criminal Code, which specifically deal with threats. If a coordinating, consulting or administering practitioner or an authorised supplier or disposer was bribed to participate or refused to participate in the process, section 82 of the Criminal Code would apply. Section 82 provides that any public officer who obtains or who seeks or agrees to receive a bribe, and any person who gives or offers or promises to give a bribe to a public officer is guilty of a crime and is liable to imprisonment for seven years. Corruption provisions also apply under section 83 of the Criminal Code with regard to the public officer. In some cases the conduct may constitute fraud under section 409 of the Criminal Code; for example, when there is an intent to defraud and the offender uses deceit for fraudulent means to cause a detriment.

Hon AARON STONEHOUSE: I think I see what the amendment intends to address. I wonder whether there is a possible unintended consequence. Proposed new clause 101A(1) states "or causes or threatens any disadvantage". I wonder how broadly "disadvantage" could be applied. Proposed new subclause (2)(a) states —

> participating, or refusing to participate, in the request and assessment process;

Might that conflict somehow with conscientious objectors—for example, a medical practitioner who refuses to provide assessment, but then their employer puts them in a situation by saying, "At this clinic, we provide that. That is the policy of this organisation. If you do not want to provide VAD as a medical practitioner, you should find employment elsewhere." Alternatively, that situation could be reversed and have a medical practitioner who wants to provide VAD, but their employer says that it is a religious-based hospital and if they want to provide VAD, they must go elsewhere; they will not be employed there. I wonder whether the reference to "disadvantage" in this instance might fall foul of that. I do not think it would, because I do not think it meets the threshold of a threat, but I wonder whether any consideration has been given to that and whether the mover of the motion or the minister, through the advice he gets, has anything to say about any potential unintended consequences. If the criticism is merely that these offences would already be captured in existing criminal law or other aspects of the bill, I do not see any problem with passing this new clause. It is seems to merely spell out a little more clearly what we are trying to prevent. If my concern about unintended consequences can be answered by either the mover or the minister, that would be helpful to me.

Hon STEPHEN DAWSON: My advisers tell me that the member is right. It would not have to be a threat. If it causes a disadvantage, it would be captured.

Hon NICK GOIRAN: When we looked at clause 99, as I understood it, it was about somebody inducing a person, who I will refer to as a patient, to proceed with voluntary assisted dying. As I understand it, this amendment seems to be looking not at the patient, but the practitioner. Earlier, the minister listed a number of provisions of the Criminal Code that he said already capture this. I want to go back to the theme we were looking at earlier—that is, when the outcome of the inducement is the death of a patient. If a person induces a medical practitioner to participate in VAD in the terms that Hon Charles Smith has put before us, or in the terms that the minister has referred to in other sections of the Criminal Code, and it would lead to the death of the person, does one of the sections in the Criminal Code the minister referred to deal with the situation in which death ensues?

Hon STEPHEN DAWSON: Can the honourable member clarify his question and ask it again for us, if he does not mind?

Hon NICK GOIRAN: I was far ahead of the minister and on to another clause. We were looking at the amendment of Hon Charles Smith. My understanding is that it looks at circumstances in which a person, a doctor or practitioner, is induced. I made the point that clause 99, which we dealt with earlier, looked at inducements of what I have described as a patient. This one looks at the inducement of a practitioner. I am keen to know whether any of the sections in the Criminal Code the minister referred to earlier would capture a situation in which there is not just an inducement of the practitioner to participate in this, but that it leads to the death of the patient. Given that the doctor is one of the safeguards and has to assess whether the person has a terminal illness and will die within six months, is not being coerced, and has decision-making capacity—they have to go through all those things—we do not want the practitioner to do that under duress. We do not want them to be unduly influenced. We do not

want them to do it because they have been given some inappropriate incentive or threat of disadvantage—all those kinds of things. I think we all agree that we do not want those things to happen. We especially do not want a wrongful death as a result of it. If we have a practitioner who says, "I'm just going to say that this person has only six months to live", I want to make sure that the provisions the minister quoted earlier capture the scenario in which death ensues.

Hon STEPHEN DAWSON: I am advised that in the example the member has provided, murder or manslaughter could apply. That relates to section 273 of the Criminal Code. If it hastens death, it could be murder or manslaughter.

Hon NICK GOIRAN: I am talking about the person who has induced the practitioner to perform the act. Would that still be captured?

Hon STEPHEN DAWSON: Is the honourable member suggesting that somebody might be inducing a practitioner to participate in a lawful voluntary assisted dying process?

Hon Nick Goiran: Possibly.

Hon STEPHEN DAWSON: If so, that would not be an offence. If they were persuading someone to participate lawfully under the bill, that would not be an offence.

Hon NICK GOIRAN: I am not sure that can be right. For example, we talked about conscientious objection earlier in the bill. Let us use that as the hypothetical. If the practitioner has a conscientious objection, but someone started to exert pressure on that person and says, "Listen, sunshine, you put your conscientious objection to one side, thank you very much. I've got a patient here who I want to refer to you and you are going to participate in this thing and help this person. You can forget about your conscientious objection. If you don't do it, I am going to release these photographs that I have of you", or some other kind of inducement of that sort.

Hon Stephen Dawson: That's a threat, and it's probably blackmail.

Hon NICK GOIRAN: We are starting to make progress here. What I am asking is that if, as a result of that, it leads to the death of the person, is that captured by one of the sections that the minister quoted earlier?

Hon STEPHEN DAWSON: If the patient dies after lawful access to voluntary assisted dying, the person who persuaded the practitioner to participate is not guilty of murder. That person may be guilty of the offence of making unlawful threats, which is captured by the examples I gave earlier of section 338(a) and (b) of the Criminal Code.

Hon NICK GOIRAN: I guess it all turns then on whether the patient died lawfully, as the minister described it. I would say that if the practitioner has made an assessment that the person had a terminal illness when they did not have a terminal illness, that is unlawful and there should be major repercussions. Of course, the practitioner has done something unlawful and there should be a penalty for them—no question. But should there not also be an equally severe penalty for the person who induced the practitioner in the first place? That is the mischief that I want to make sure is captured, whether it be by Hon Charles Smith's amendment or some other amendment, or one of the clauses that the minister referred to earlier. The scenario that I want to make sure we properly capture is the initial inducer—the person who induced the practitioner to do the wrong thing that led to the death of a person.

Hon STEPHEN DAWSON: What the honourable member described in his earlier example is a crime that would be captured by clause 98 of the bill, which states, "A person commits a crime if", and there is a penalty associated with that.

Hon NICK GOIRAN: Yes; but, minister, correct me if I am wrong, clause 98 applies only to the practitioner, the person who administered the prescribed substance. I concede that that person needs to be prosecuted and be shown the full force of the law, but I want to make sure that we capture the person who induced the person to do wrong under clause 98. What clause in the bill will capture the inducer in the event that the patient ultimately dies as a result of those actions?

Hon STEPHEN DAWSON: If the practitioner is induced to make a false assessment, the inducer would be guilty of a crime, because that is the counselling or procuring of an offence, and that issue is captured by chapter II, section 7, of the Criminal Code.

Hon NICK GOIRAN: So to be clear, that provision of the Criminal Code, when read in conjunction with clause 98, would capture that particular individual?

Hon STEPHEN DAWSON: I am told that it can be read in conjunction with or in separation.

Hon NICK GOIRAN: We can see from this exercise how torturous it is to identify the relevant offence under which the police or the DPP will prosecute. The solution provided by Hon Charles Smith is far simpler because it will all be in the same bill and we will not have to go through this torturous exercise to decide whether

a person should be prosecuted. For those reasons, I support Hon Charles Smith's amendment, albeit I think it could go further.

Division

New clause put and a division taken, the Deputy Chair (Hon Dr Steve Thomas) casting his vote with the noes, with the following result —

Ayes (7)

Hon Nick Goiran	Hon Simon O'Brien	Hon Aaron Stonehouse	Hon Ken Baston *(Teller)*
Hon Rick Mazza	Hon Charles Smith	Hon Colin Tincknell	

Noes (28)

Hon Martin Aldridge	Hon Stephen Dawson	Hon Colin Holt	Hon Tjorn Sibma
Hon Jacqui Boydell	Hon Colin de Grussa	Hon Alannah MacTiernan	Hon Matthew Swinbourn
Hon Robin Chapple	Hon Sue Ellery	Hon Kyle McGinn	Hon Dr Sally Talbot
Hon Jim Chown	Hon Diane Evers	Hon Michael Mischin	Hon Dr Steve Thomas
Hon Tim Clifford	Hon Donna Faragher	Hon Martin Pritchard	Hon Darren West
Hon Alanna Clohesy	Hon Adele Farina	Hon Samantha Rowe	Hon Alison Xamon
Hon Peter Collier	Hon Laurie Graham	Hon Robin Scott	Hon Pierre Yang *(Teller)*

New clause thus negatived.

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

Hon NICK GOIRAN: Clause 102 uses the word "advertises"; is that intended to include publish?

Hon STEPHEN DAWSON: I am advised that it does include publication.

Hon NICK GOIRAN: If it includes publication, how is a doctor to be told what the schedule 4 and schedule 8 voluntary assisted dying substance is that has been approved by the CEO? The moment the CEO publishes that information he is liable to imprisonment for three years or a fine of $36 000.

Hon STEPHEN DAWSON: It has to be the publication of an advertisement, not a pamphlet handed out by the CEO, for example. It is the publication of an advertisement.

Hon NICK GOIRAN: My first question was: does "advertises" include publishing; therefore, the answer is no, not yes.

Hon Stephen Dawson: It includes the publication of an advertisement.

Hon NICK GOIRAN: I did ask about publishing. Let us make sure that we are on the same page here. A person cannot advertise or put out a publication. How will the CEO communicate to practitioners about a voluntary assisted dying substance without contravening clause 102?

Hon STEPHEN DAWSON: The offence is directed at advertising, not the communication of information. The word "advertises" has a commercial flavour attached to it. The CEO could provide the information to practitioners by writing a letter or sending information to them about the available substance. This is not advertising if it conveys information.

Hon MICHAEL MISCHIN: What is the mischief at which this is aimed? Is it the advertising of a schedule 4 or schedule 8 poison that has not been approved as a voluntary assisted dying substance, or just advertising these as substances that can be used for voluntary assisted dying? What is it aimed at? It may be that the offence needs to be refined somewhat. If it is talking about a substance that has not been approved pursuant to clause 7 as a voluntary assisted dying substance, then I can understand what this provision is driving at. If it has been approved pursuant to clause 7, what is the harm in saying in a pamphlet, "We produce this particular substance, which is an approved voluntary assisted dying substance", signed off under the banner of the chemical or pharmaceutical company producing it? What are we aiming at here?

Hon STEPHEN DAWSON: The reason for the clause is that schedule 4 and 8 substances are currently supplied to persons pursuant to the WA Medicines and Poisons Act 2014. It would not be prudent to allow the public to know which of these poisons or substances may be used for voluntary assisted dying as it may encourage persons to stockpile their supply for the purpose of suicide or assisted suicide outside the protections of the Voluntary Assisted Dying Act. Furthermore, evidence from overseas has shown that once the medication becomes known as a voluntary assisted dying substance, manufacturers of that substance significantly mark up the price.

Hon MICHAEL MISCHIN: Just on that point then, if I were to find out—inevitably people will find out—which particular schedule 4 or schedule 8 poison is being used for voluntary assisted dying and I were to go on Facebook and say, "Look, this is the stuff they use", would that be advertising contrary to this clause? Just to take that further,

if I were simply to write an email to someone and say, "I have found what they use for this process; this is it", would that be advertising it?

Hon STEPHEN DAWSON: This clause is aimed at those seeking to profit, so it relates to commercial advertising. If someone is telling a mate, it would not be captured by this. I think that is probably how I would answer it.

Hon NICK GOIRAN: If the person decides as a measure of generosity to the community to charge nothing, not to profit from the advertisement in any way, would it be okay? Would the clause apply only if they were to make a profit? Is that what triggers clause 102? I do not think that can be the case, surely.

Hon STEPHEN DAWSON: If the person was promoting its use, that could be captured. I talked about someone telling a mate about something and saying, "I know what this is", but if they are promoting the use of it, that could be captured, and the decision about whether charges are laid would be a matter of prosecutorial discretion.

Hon NICK GOIRAN: Would the clause read better as, "A person commits a crime if the person advertises, promotes or in any other way represents a schedule 4 or schedule 8 poison as a voluntary assisted dying substance"?

Hon STEPHEN DAWSON: We are happy with how the clause reads at the moment. Advertising could include promotion, so we do not support an amendment.

Hon ADELE FARINA: I apologise; would the minister mind repeating that?

Hon STEPHEN DAWSON: I indicated that we do not support an amendment to this clause. We believe it should stand as it is. I said that advertising would include promotion. We think the clause reads well as it is and we do not support an amendment.

Hon ADELE FARINA: I am now very confused about the intention behind this clause; I was not when I first read it, but I am now. Does the minister realise that details and information about all of the substances used for voluntary assisted dying, suicide, are extensively available if someone does a Google search? Does that constitute advertising?

Hon STEPHEN DAWSON: I have answered this already; perhaps the member did not hear. The issue is advertising the substance as a voluntary assisted dying substance.

Hon Adele Farina interjected.

Hon STEPHEN DAWSON: No, they are schedule 4 and schedule 8 poisons that are potentially commonly available at the moment, but this clause captures advertising them as voluntary assisted dying substances. That is what I have said multiple times now. As I have indicated, I support the clause as it stands. Regulations 91 and 100 of the Medicines and Poisons Regulations 2016 currently impose restrictions on the advertising of schedule 4 and schedule 8 poisons.

Clause put and passed.

Clause 103: Cancellation of document presented as prescription —

Hon NICK GOIRAN: I move —

Page 68, line 7 — To insert before "cancel" —

Immediately

Hon STEPHEN DAWSON: We are not supportive of this amendment. The government does not want to say "immediately", but we would expect cancellation to be in a timely manner, so if not immediately, then as soon as practicable. There is a significant penalty for failure to do so.

Amendment put and negatived.

Hon MICHAEL MISCHIN: My question regarding clause 103 focuses on subclause (2) and the purported creation of an offence. Clause 103(1) provides the circumstances in which the proposed section will apply. The clause then continues, in subclause (2), to provide that an authorised supplier must cancel a document in a particular way and inform the CEO administering the act that the document has been cancelled and the reasons for cancelling it. It then goes on to state —

Penalty for this subsection: imprisonment for 12 months.

The Interpretation Act 1984 provides that when, in an act, a penalty is specified at the foot of a subsection of a section, unless the contrary is expressly provided, a contravention of the section or subsection, as the case may be, is an offence, and the penalty on conviction is the penalty prescribed. I am a little unclear about what the contravention is in this case. Subclause (2) prescribes an obligation to do something, and then says that the penalty for it is imprisonment for 12 months. I infer that what is meant is that a failure to comply with that clause, or failure to do something under one of those obligations, gives rise to an offence by operation of section 72 of the Interpretation Act,

but that is by no means plain in the manner in which that clause is framed. By way of assistance, I think there is a similar issue with clause 104(1) and (2). I wonder if the minister can turn his mind to that and, if there is an issue with it, it may be something that the government will need to correct.

Hon STEPHEN DAWSON: I am told that there is no need to amend, because a contravention of subclause 103(2) gives rise to the penalty, and that is based on section 72(1) of the Interpretation Act 1984.

Hon MICHAEL MISCHIN: I am not going to argue with the minister about the matter. I once again draw his attention to the view of the Law Society in its submission, at paragraph 4.1.7, which tends to reinforce the position that I have expressed. It states —

> The Society notes that sub-clauses 103(2), 104(1) and 104(2) of the Bill create obligations and then declare a penalty. They do not provide that a crime or offence is committed if a person acts in a particular way, as clauses 98, 99(2), 100 and 102 do. On the face of sub-clauses 103(2), 104(1) and 104(2) they prescribe a penalty for complying with the obligations stated in those sub-clauses. The Society assumes that it was probably intended that those provisions make it an offence to **not** comply with those obligations. If so, those provisions are required to be amended accordingly.

If the advice that the minister has received, and with which the government is comfortable, is that there is no ambiguity or uncertainty about what is meant there and that there will be no problem down the track, I am not going to argue the toss with him, but I simply draw to his attention that perhaps some clarity would be useful.

Hon STEPHEN DAWSON: I am told it is a drafting convention, and similar to regulation 26 of the Medicines and Poisons Regulations 2016. We have taken advice from the Parliamentary Counsel's Office and the State Solicitor's Office, and they agree with the position in the bill.

Hon NICK GOIRAN: I move —

> Page 68, line 9 — to delete "inform the CEO" and substitute —
>
> within 2 business days after cancelling the document, inform the CEO and the Board

Hon STEPHEN DAWSON: The government does not support this amendment. The board will be notified via the database that we have spoken about previously. The CEO will be informed in a timely manner. I note that the cancellation of the prescription means that the voluntary assisted dying substance is not supplied to the patient or the agent.

Hon NICK GOIRAN: By way of explanation of this amendment, clause 103 outlines what must be done when an authorised supplier is given a document that is presented as a prescription for a voluntary assisted dying substance and the authorised supplier is satisfied that the document does certain things as set out in subclause (1)(b), which states —

> the authorised supplier is satisfied that the document —
>
> (i) does not comply with section 69; or
>
> (ii) is not issued by the coordinating practitioner for the patient to whom it relates; or
>
> (iii) is false in a material particular.

Clause 103(2) provides that the authorised supplier must cancel the document by marking the word "cancelled" across it and inform the CEO that the document has been cancelled and give the reasons for cancelling. The penalty for failure to cancel the document and informing the CEO of the document cancellation is imprisonment for 12 months. The amendment I have moved will do two things: firstly, it will insert a time frame within which notification by the authorised supplier to the CEO must occur—that is, within two business days after cancelling the document. Secondly, it will require the authorised supplier to notify not only the CEO of the cancellation but also the Voluntary Assisted Dying Board. I note that other important notifications within this bill are required to take place within two business days of a form being completed, yet in this instance, when the document is a false or noncompliant prescription and the authorised supplier has to cancel the document, there is no requirement for that notification to the CEO to occur within a set time frame. This deficiency was identified by the Law Society in the submission it circulated to us over the last week. I quote from its submission dated 27 September 2019, particularly the paragraph on page 8, where the Law Society states —

> Clause 103 of the VAD Bill provides for the cancellation of documents presented as a prescription by an authorised person but there is no timeframe for compliance.

If we are going to ask the person to inform the CEO—if they do not do it, they are liable to go to jail for 12 months—we should at least let that person know how long they have before they are prosecuted and potentially go to jail. I do not think it is asking too much. I do not really mind whether the period is two days or some other period, but

it is the complete absence of a period in this provision that concerns me. As I say, the Law Society itself has raised it with members. The Law Society's solution was that we could deal with this by way of a prescription by regulation. I understand from previous discussions, particularly under clause 1, that the government is not intending to move any regulations. I would rather we insert it now while we have the opportunity before us, given the constraints with otherwise trying to handle this matter. The second part of the amendment deals with the information being provided not merely to the CEO, as is currently set out in clause 103, but also to the board. This was picked up by the member for Hillarys in debate in the other place on 18 September. I note that this is the only clause that I can identify in the bill that requires a person to provide notification to the CEO only. Clause 93 requires the CEO, amongst a list of persons, including the board, to be notified by the tribunal that a review application has been made. Clause 95 requires the CEO, amongst a list of persons, including the board, to be given the written reasons for a tribunal decision, and clause 109 requires a court to notify the CEO of a conviction for an offence under this act. I cannot see why clause 103 is the exception within this act when the CEO and only the CEO is required to be notified of something by an individual who holds responsibilities under this act in the request assessment and administration process.

I ask for members' support, emphasising that this is an issue identified by the Law Society in its submission to us dated 27 November this year; and, secondly, if we do not do this, according to clause 103 as it currently stands, an authorised supplier can go to jail for up to 12 months for not providing information to the CEO but we will not tell them how long they have to do so. If it continues to be the position of the government that it does not want to support the amendment in either its current or an alternative form, I ask the minister to, at the very least, clarify how long the authorised supplier will have to inform the CEO that the document has been cancelled before prosecution proceedings commence?

Hon STEPHEN DAWSON: I am told that this provision is consistent with the requirement to inform the CEO in regulation 26 of the Medicines and Poisons Regulations 2016. It was inserted specifically to mirror the MPA in relation to schedule 4 and schedule 8. The penalty is higher to reflect that it is a voluntary assisted dying substance. The board can access the information on the database and the CEO has the discretion to initiate prosecution of this simple offence. It may well be that the practitioner is reminded that they need to do this before any prosecution is initiated. Certainly, the view is that it be done as soon as practicable.

Hon NICK GOIRAN: How much time will the authorised supplier have to inform the CEO before being in jeopardy of a charge? Is it 24 hours, one week, one month or one year? If the government is not going to put in a period when everywhere else in the bill it says two business days, we have a responsibility to make sure we make it clear to the authorised supplier that they have to do that within a certain period because if they do not, they could go to jail for 12 months. What amount of time will be taken before deciding whether the CEO will proceed or not?

Hon STEPHEN DAWSON: It will be at the CEO's discretion, but the likelihood is that the length of time will be decided upon as part of the guidelines during the implementation phase.

Hon NICK GOIRAN: What makes the provision of this document different from every other document that needs to be provided? Why do all the other documents have to be provided within two days but not this one?

Hon STEPHEN DAWSON: The cancellation of the prescription means that the voluntary assisted dying substance will not be supplied to the patient or the agent, so there is less of a degree of urgency than in other parts of the bill. The board will know whether a prescription has been issued, so if it does not get notification of supply, it can check the reasons.

Amendment put and negatived.

Clause put and passed.

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

Hon NICK GOIRAN: I understand from Hon Rick Mazza that he is not moving any further amendments. On that assumption, I want to ask a few questions on clause 104. What mechanism will be in place to ensure a contact person is notified within 14 days of the date on which the patient made the revocation decision?

Hon STEPHEN DAWSON: The board is required under clause 148 to send the contact person certain information about their obligations and the support services available to them. The board will follow up with the contact person to remind them to return the substance in time or to request information as required.

Hon NICK GOIRAN: What part of the support services or information that will be provided to the contact person will assist them to ensure that they have been notified within 14 days of the date on which the patient made the revocation decision?

Hon STEPHEN DAWSON: The patient must inform the contact person of the revocation.

Hon NICK GOIRAN: If they do not do that, how will the contact person comply with the 14-day time frame?

Hon STEPHEN DAWSON: The coordinating practitioner and the board will remind the contact person to keep in contact with the patient so they know what is going on.

Hon NICK GOIRAN: That sounds like an excellent way to coerce the patient. Will it be a defence to a prosecution under clause 104(1) for the contact person to say that they did not know the day on which the decision was revoked?

Hon STEPHEN DAWSON: As I previously stated, the contact person is expected and likely to be a person who remains in close contact with the patient. The patient will know to tell the contact person. But in answer to the member's last question, there is no such defence in the bill.

Hon NICK GOIRAN: How will the contact person, appointed by the patient, gain entry to the premises to collect any unused or remaining poison in order to provide that poison to the authorised disposer for disposal?

Hon STEPHEN DAWSON: They would make an arrangement with the patient prior to the event. As part of the role, they will need to make an effective plan with the patient about how to do this.

Hon NICK GOIRAN: Clause 104 refers only to the return of a prescribed substance for disposal when a self-administration decision is revoked or the patient has died. What about the circumstance in which the patient loses decision-making capacity but remains in possession of the prescribed substance? How will that be dealt with and provided for in this bill?

Hon STEPHEN DAWSON: In that case, the contact person can contact the coordinating practitioner or the board, and the CEO can work out how to retrieve the substance.

Hon NICK GOIRAN: Is there some sort of power of seizure that would enable the CEO to direct somebody to go to the premises and seize the substance on the grounds that the person has lost decision-making capacity?

Hon STEPHEN DAWSON: Section 103 of the Medicines and Poisons Act 2014 allows for it to be seized.

Clause put and passed.

Clause 105: Recording, use or disclosure of information —

Hon NICK GOIRAN: Clause 105(2) sets out an exhaustive list of occasions when recording, using or disclosing information will be lawful. What are the unlawful occasions that will be captured by clause 105(1) that are not allowed for by virtue of clause 105(2)?

Hon STEPHEN DAWSON: An example of that is that an officer employed by the board cannot disclose confidential information that is received by the board and accessed in his role.

Hon NICK GOIRAN: The minister will see that clause 105(2)(f)(ii) empowers an administrator of the estate to authorise the disclosure of information. Would that person need to have obtained letters of administration before being able to make use of the power; and, if so, are there any circumstances in which that person would need to disclose such information to obtain the letters of administration in the first place?

Hon STEPHEN DAWSON: I am advised that yes, letters of administration would need to be obtained, but there would be no need to disclose such information.

Clause put and passed.

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

Hon NICK GOIRAN: In response to some answers yesterday, the minister indicated that it was apparent that there had been quite a bit of consultation between the government and the president of the State Administrative Tribunal, so I take it that the tribunal has been consulted about clause 106. Be that as it may, if the tribunal uncovers some mischief during a proceeding under part 5, how will it report or deal with that information if clause 106 remains in its current form?

Hon STEPHEN DAWSON: Under clause 95(2)(f) the board gets a copy of the reasons for the decision and, further, under clause 96(2), it can disclose that personal information in those reasons.

Hon NICK GOIRAN: I move —

Page 70, after line 18 — To insert —

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

Hon STEPHEN DAWSON: The government accepts this amendment for reasons that were given in the discussion on amendment 475/96.

Amendment put and passed.

Hon NICK GOIRAN: I move —

Page 70, lines 20 and 21 — To delete "the administering practitioner for the patient." and substitute —

a person to whom the role has been transferred.

Hon STEPHEN DAWSON: Again, the government supports this amendment. Reasons were given when a similar amendment was moved at 476/96. For the very same reasons, we support it.

Amendment put and passed.

Clause, as amended, put and passed.

Clause 107: Failure to give form to Board —

Hon NICK GOIRAN: What defences would be available to a person charged with a clause 107 offence?

Hon STEPHEN DAWSON: The normal Criminal Code defences in chapter V would apply; for example, incapacity. I am further advised that clause 113(2) of this bill may also provide protection from criminal liability under the act. I was not clear that the amendments at 47/107, 48/107 and 452/107 were not being moved. I have an amendment at 406/107. This amendment will mean that there will not be a $10 000 penalty for a medical practitioner who fails to report a first request to the board. This amendment follows concern from medical practitioners that doctors who were otherwise ineligible to participate, or inexperienced doctors, such as junior doctors, could inadvertently fail to lodge a first request form; however, the practitioner can still be held accountable via clause 10 of the bill. Contravention of the act is capable of constituting professional misconduct and unprofessional conduct. The government considers this to be a good amendment and obviously I support it. I move —

Page 70, after line 27, the table, the first row, the first column — To delete —

s. 21(1)

Hon NICK GOIRAN: I support this amendment—the fiftieth that will be agreed to by this chamber on this bill that we were told required no further consideration; no amendments needed. That is not the only reason I support it. Members may recall that when we were first considering this alleged perfect bill I indicated that it was totally over the top. I put on the *Hansard* record several times during the consideration of that particular clause that it was totally over the top to ask a medical practitioner to have to supply a form to a board about a first request and then say to them, "By the way, if you do not do that within two days, you will be fined $10 000", including when the bill states that the person is not available. I am grateful that commonsense has prevailed, and this amendment has my full support.

Hon STEPHEN DAWSON: I want to make it clear, because Hon Nick Goiran has reminded us of amendments having passed this place thus far, that I have always made it clear in this place that I would give consideration to proposed amendments. We have listened to all members in this place and, indeed, stakeholders like the Australian Medical Association. The government has engaged with them about their genuine concerns. I have no problem moving amendments if I believe they are beneficial to the bill. As I said, that is consistent with my point during this lengthy consideration of the bill.

Hon NICK GOIRAN: I take no issue whatsoever with the conduct of this minister, who has been exemplary in the handling of a difficult and lengthy debate. However, I put on the record that that type of approach has not been shared by the Premier who said that anyone who wants to suggest amendments will be wrecking the bill. "Wrecking" has been used repeatedly in the public domain by that individual who has been intemperate in his remarks. I simply make the point that this will be the fiftieth—five-zero—amendment that has been passed by the chamber.

Amendment put and passed.

Clause, as amended, put and passed.

Clause 108: Application of *Medicines and Poisons Act 2014* Part 7 —

Hon NICK GOIRAN: Clause 108 is complex for even the most experienced of legislators. Clause 108(6) states that section 101 of the Medicines and Poisons Act "is to be read as if section 101(1)(a) and (2) were deleted". I note that, in effect, the government is asking us to agree to obliterate the majority of the provisions in section 101 of the Medicines and Poisons Act. At the moment, section 101 of the Medicines and Poisons Act states —

(1) An investigation may be carried out for either or both of the following purposes —

(a) monitoring whether this Act is being complied with;

We are taking that out —

(b) investigating a suspected contravention of this Act.

(2) The regulations may make provision relating to the procedures to be followed by investigators when carrying out functions under this Act.

In those circumstances, why will investigations be unable to be carried out for the purpose of monitoring whether the voluntary assisted dying act is being complied with?

Hon STEPHEN DAWSON: I am told that it highlights the delineation of the role of the Voluntary Assisted Dying Board and that of the CEO of the Department of Health. The latter will have the investigative role and the board will have the monitoring role for this bill.

Committee interrupted, pursuant to standing orders.

[Continued on page 9818.]

Sitting suspended from 4.15 to 4.30 pm