



**New South Wales**

# **Legislative Council**

## **PARLIAMENTARY DEBATES (HANSARD)**

**Fifty-Seventh Parliament  
First Session**

**Wednesday, 18 May 2022**

Authorised by the Parliament of New South Wales



## TABLE OF CONTENTS

Visitors.....	6497
Visitors.....	6497
Motions.....	6497
Tribute to Thelma McCarthy.....	6497
International Anti-Street Harassment Week.....	6497
Mullivaikkal Remembrance Day.....	6498
HMAS Maitland.....	6498
Hunter Safety Awards.....	6498
Documents.....	6499
Mascot Towers.....	6499
Production of Documents: Order.....	6499
Hawkesbury City Councillor Sarah Richards and Matthew Bennett.....	6499
Correspondence.....	6499
Business of the House.....	6499
Suspension of Standing and Sessional Orders: Order of Business.....	6499
Order of Business.....	6499
Bills.....	6500
Animal Research Amendment (Right to Release) Bill 2022.....	6500
First Reading.....	6500
Second Reading Speech.....	6500
Documents.....	6503
New Intercity Fleet.....	6503
Production of Documents: Order.....	6503
Youth Programs.....	6507
Production of Documents: Order.....	6507
Bills.....	6509
Voluntary Assisted Dying Bill 2021.....	6509
In Committee.....	6509
Members.....	6515
Representation of Ministers Absent During Questions.....	6515
Questions Without Notice.....	6515
KPMG Flood Assistance Consultancy Fees.....	6515
Cooler Classrooms Program.....	6516
Road Tolls.....	6516
Animal Research and Mandatory Rehoming.....	6518
Regional Health Workforce.....	6518
Regional Healthcare Funding.....	6519
Balmain Leagues Club Site.....	6520
Western Sydney Infrastructure.....	6521
Newington College.....	6522

## TABLE OF CONTENTS—*continuing*

Icare and Dust Diseases Compensation .....	6522
National Road Safety Week and Schools .....	6524
Gender Definitions.....	6524
Future Transport Strategy: Towards 2061 .....	6525
Aboriginal Business Roundtable .....	6525
Sanctuary Zone Fishing .....	6526
Supplementary Questions for Written Answers .....	6526
Cooler Classrooms Program .....	6526
Written Answers to Supplementary Questions .....	6526
New Intercity Fleet .....	6526
Announcements .....	6527
Legislative Council Photographs.....	6527
Private Members' Statements.....	6527
Koala Habitat .....	6527
Lismore Flood Recovery .....	6527
Ramadan .....	6528
National Road Safety Week.....	6528
Apra Music Awards .....	6528
Callala Bay Land Development.....	6529
Labor Federal Candidate for Parramatta Andrew Charlton.....	6529
Super Home Buyer Scheme .....	6530
Cattle and Water Buffalo Lumpy Skin Disease.....	6530
Death of Shireen Abu Akleh.....	6531
Documents .....	6531
Department of Primary Industries .....	6531
Reports.....	6531
Bills.....	6532
Government Telecommunications Amendment Bill 2022 .....	6532
First Reading.....	6532
Voluntary Assisted Dying Bill 2022.....	6532
In Committee .....	6532
Business of the House.....	6592
Suspension of Standing and Sessional Orders.....	6592
Bills.....	6592
Voluntary Assisted Dying Bill 2021.....	6592
In Committee .....	6592
Adjournment Debate.....	6593
Adjournment .....	6593
Allegra Spender Federal Election Campaign.....	6593
Federal Election .....	6594
Land Clearing .....	6595
Death of Shireen Abu Akleh.....	6596

**TABLE OF CONTENTS—*continuing***

Wages and Inflation .....6596

Anti-Protest Laws .....6597

## LEGISLATIVE COUNCIL

**Wednesday, 18 May 2022**

**The PRESIDENT (The Hon. Matthew Ryan Mason-Cox)** took the chair at 10:00.

**The PRESIDENT** read the prayers and acknowledged the Gadigal clan of the Eora nation and its Elders and thanked them for their custodianship of this land.

### *Visitors*

### **VISITORS**

**The PRESIDENT:** I welcome to the gallery a guest of the Hon. Wes Fang, Mr Lachlan Brown from Charles Sturt University in Wagga Wagga, who has been judging the Premier's Literary Awards.

### *Motions*

### **TRIBUTE TO THELMA MCCARTHY**

**The Hon. PETER PRIMROSE (10:02):** I move:

- (1) That this House notes the sad passing of Thelma McCarthy, AM, and expresses its deepest condolences to her family; her children, Annette, Janis and Robert; her daughter-in-law, Jacque; and her grandchildren and great-grandchildren, Sarah, Fleur, Sean, Emily, Lotus, Arwen, Lucas, Xavier and Fraser; as well as her community.
- (2) That this House notes that Thelma was recognised as a champion for the Armidale community and her passion and advocacy for regional New South Wales epitomised what it means to live a life of public service.
- (3) That this House notes that:
  - (a) Thelma had a social conscience which spurred her to action, including championing the rights of women, advocating for Armidale and regional New South Wales, and advocating for people who experienced hardships in her community; and
  - (b) prior to her passing, Thelma had been speaking to local councillors, especially the Labor councillors on Armidale Regional Council Debra O'Brien and Susan McMichael, about projects to advance the communities of Armidale and Guyra, such was her passion for her community.
- (4) That this House notes that Thelma:
  - (a) was one of the first women to join the Royal Australian Air Force as a telegraphist, stepping up to join the war effort after the bombing of Darwin in 1942;
  - (b) along with her late husband, Bill, was an active member for many decades in the Australian Labor Party, receiving life membership after 40 years of service, was dedicated to being the voice and face of the Labor Party in Armidale, and provided advice and mentoring to Labor Party members involved in the local branch, and the State electorate council;
  - (c) was credited with being a major part in her late husband, Bill McCarthy, MP's success in being a Labor member of the New South Wales Parliament from 1978 to 1987 before his sad passing;
  - (d) while Deputy Chair of the NSW Bicentennial Council, pushed for Armidale's arboretum, which is now a city landmark, and drew together service clubs, schools, businesses, individuals and council;
  - (e) served on the NSW Ministerial Advisory Committee on Ageing;
  - (f) was appointed as a member of the Order of Australia for her service to the community and New South Wales; and
  - (g) advocated for those who were "doing it tough" in regional New South Wales and sought solutions that allowed everyone to live a life of dignity.
- (5) That this House notes that Thelma McCarthy will be deeply and sadly missed by all, especially by her Labor family. Vale Thelma McCarthy, AM.

**Motion agreed to.**

### **INTERNATIONAL ANTI-STREET HARASSMENT WEEK**

**Ms ABIGAIL BOYD (10:03):** I move:

- (1) That this House notes that the week of 3 April 2022 was International Anti-Street Harassment Week, which raises awareness for how pervasive street harassment is and how much it negatively affects the lives of so many people, and calls on all levels of society to work together to end street harassment.
- (2) That this House notes that, according to a study by Plan International Australia, published in April 2022:

- (a) one in five young Australian women feel less safe alone at night than they did before the COVID-19 pandemic;
  - (b) only 5 per cent of women aged between 18 and 24 felt safer in public places such as streets, train stations and parks, while almost 20 per cent felt less safe in public places;
  - (c) one in three young women with a disability said they felt less safe today than they did before the pandemic; and
  - (d) 42 per cent of women and gender diverse people under 20 years old reported they felt unsafe largely due to sexual harassment.
- (3) That this House calls on the New South Wales Government to take direct action to create inclusive spaces for women and gender-diverse people through dedicated prevention efforts to address the underlying gendered drivers of harassment, strong advocacy and frontline support for victims of harassment and assault, and accessible reporting tools.

**Motion agreed to.**

### MULLIVAICKAL REMEMBRANCE DAY

**The Hon. ANTHONY D'ADAM (10:04):** I move:

- (1) That this House notes that:
  - (a) Mullivaikkal Remembrance Day takes place each year on 18 May;
  - (b) 18 May 2022 marks the thirteenth anniversary of the formal conclusion of Sri Lanka's 26-year civil war; and
  - (c) the United Nations estimates that the Sri Lankan Civil war killed at least 100,000 people.
- (2) That this House acknowledges:
  - (a) the tens of thousands of Tamil refugees who have made a home in Australia and the contributions they make to our multicultural society; and
  - (b) the efforts of the NSW Consortium of Tamil Associations and its member organisations that commemorate the civilians killed during the Sri Lankan civil war each year on 18 May.

**Motion agreed to.**

### HMAS MAITLAND

**The Hon. TAYLOR MARTIN (10:05):** I move:

- (1) That this House notes that:
  - (a) on 2 April 2022, the crew of Armidale class patrol boat HMAS *Maitland* exercised its final Freedom of Entry parade in Maitland;
  - (b) the HMAS *Maitland* was decommissioned on 28 April 2022, after 16 years of service in the Royal Australian Navy;
  - (c) HMAS *Maitland* was named after the City of Maitland and was the first Royal Australian Navy ship to carry this name;
  - (d) the ship conducted a wide variety of operations alongside government agencies protecting Australia against unauthorised entry, breaches of customs, upholding immigration and drugs legislation and other illegal activity;
  - (e) the ceremonial march celebrated the vessel's long association with the City of Maitland, which stretches back to when it was first commissioned and the inaugural Freedom of Entry to Maitland in September 2006; and
  - (f) this was the third time the honour of Freedom of Entry had been granted to HMAS *Maitland* and the sixth time the honour had been granted by Maitland City Council.
- (2) That this House acknowledges the achievements of HMAS *Maitland* and all those who served on her.

**Motion agreed to.**

### HUNTER SAFETY AWARDS

**The Hon. TAYLOR MARTIN (10:05):** I move:

- (1) That this House notes that:
  - (a) on Thursday 12 May 2022 the Hunter Safety Awards gala event was held at Newcastle Exhibition and Conference Centre; and
  - (b) winners of awards included:
    - (i) WHS Student of the Year: Louise Conn (Hunter Ready Mixed Concrete);
    - (ii) Best WHS Training Program: Asset Training;
    - (iii) Best WHS Improvement (Large Organisation): Chandler Macleod;
    - (iv) Best WHS (SME): Warner Company;
    - (v) Best Health and Wellbeing Program (Large Organisation): Molycop;

- (vi) Best Health and Wellbeing Program (SME): Murray Consulting Solutions;
  - (vii) Best WHS Management System (Large Organisation): Murray Consulting Solutions;
  - (viii) Best WHS Management System (SME): CMA Contracting;
  - (ix) Most Innovative WHS Idea (Large Organisation): Molycop;
  - (x) Most Innovative WHS Idea (SME): GCG;
  - (xi) Young WHS Leader of the Year: Sam Herd (Aqua Assets);
  - (xii) WHS Champion of the Year: Monica Toews Brown (Red Insight); and
  - (xiii) WHS Business of the Year: Fenech Demolition.
- (2) That this House congratulates all winners of the 2022 Hunter Safety Awards.

**Motion agreed to.**

#### *Documents*

### **MASCOT TOWERS**

#### **Production of Documents: Order**

**The Hon. COURTNEY HOUSSOS (10:06):** I move:

That, under Standing Order 52 there be laid upon the table of the House within 21 days of passing of this resolution the following documents, created since 20 December 2021 in the possession, custody or control of the Premier, the Treasurer and Minister for Energy, the Minister for Local Government, the Minister for Small Business and Minister for Fair Trading, the Minister for Planning and Minister for Homes, the Department of Premier and Cabinet, the Department of Customer Service (including NSW Fair Trading), or the Department of Planning and Environment (including the Office of Local Government) relating to Mascot Towers investigations:

- (a) all documents relating to any request by the Minister for Local Government to the Secretary of the Department of Planning and Environment, Michael Cassel in his capacity as Chief Executive of the Office of Local Government pursuant to section 430 of the Local Government Act 1993, to conduct an investigation in relation to Mascot Towers into:
  - (i) the former City of Botany Bay Council; or
  - (ii) Bayside Council.
- (b) all documents relating to any investigation in relation to Mascot Towers into:
  - (i) the former City of Botany Bay Council; or
  - (ii) Bayside Council.
- (c) all documents, including records, policies, codes and criteria, used by the Department of Planning and Environment in determining whether any investigation pursuant to section 430 of the Local Government Act should be conducted; and
- (d) any legal or other advice regarding the scope or validity of this order of the House created as a result of this order of the House.

**Motion agreed to.**

### **HAWKESBURY CITY COUNCILLOR SARAH RICHARDS AND MATTHEW BENNETT**

#### **Correspondence**

**The CLERK:** According to the resolution of the House of Wednesday 11 May 2022, I table correspondence relating to an order for papers regarding Councillor Sarah Richards, Hawkesbury City Council, received on Tuesday 17 May 2022 from Mr John Schmidt, Electoral Commissioner, explaining the way in which the Electoral Commission will respond to the order and the likely timing of its response. I further table correspondence from the Deputy Secretary, General Counsel, Department of Premier and Cabinet, indicating that the order should be directed to the NSW Electoral Commission.

#### *Business of the House*

### **SUSPENSION OF STANDING AND SESSIONAL ORDERS: ORDER OF BUSINESS**

**The Hon. SCOTT FARLOW:** I move:

That standing and sessional orders be suspended to allow the moving of a motion forthwith relating to the order of private members' business this day.

**Motion agreed to.**

### **ORDER OF BUSINESS**

**The Hon. SCOTT FARLOW (10:09):** I move:



That the order of private members' business be as follows:

- (1) Private members' business item No. 1791 standing in the name of the Hon. Emma Hurst relating to the Animal Research Amendment (Right to Release) Bill 2022.
- (2) Private members' business item No. 1819 standing in the name of the Hon. Daniel Mookhey relating to an order for papers regarding rail negotiations.
- (3) Private members' business item No. 1776 standing in the name of the Hon. Mark Banasiak relating to an order for papers regarding social welfare program funding for Barwon electorate towns.
- (4) Private members' business item No. 1606 standing in the name of the Hon. Adam Searle relating to the Voluntary Assisted Dying Bill 2021.
- (5) Private members' business item No. 1781 standing in the name of Ms Abigail Boyd relating to an order for papers regarding anti-protest legislation.
- (6) Private members' business item No. 1826 standing in the name of the Hon. Taylor Martin relating to National Volunteer Week 2022.
- (7) Private members' business item No. 1825 standing in the name of Ms Cate Faehrmann relating to a further order for papers regarding Dungowan Dam, Wyangala Dam and Mole River Dam.
- (8) Private members' business item No. 1775 standing in the name of the Hon. Mark Banasiak relating to an order for papers regarding a report by Elton Consulting into the native vegetation regulatory map.
- (9) Private members' business item No. 1829 standing in the name of the Hon. Courtney Houssos relating to an order for papers regarding school targets and standards.
- (10) Private members' business item No. 1831 standing in the name of the Hon. Courtney Houssos relating to an order for papers regarding additional budget estimates 2021-2022 hearing for Small Business and Fair Trading.
- (11) Private members' business item No. 1785 standing in the name of the Hon. Catherine Cusack relating to the Chamber bust of the late the Hon. Virginia Chadwick, AO.
- (12) Private members' business item No. 1823 standing in the name of the Hon. Chris Rath relating to National Road Safety Week 2022.

I indicate to the House that with respect to the items listed at paragraphs (2) and (3), and (6) to (12), the members with carriage of those motions have given an undertaking that they will move that their motion be considered in the short form format.

**The PRESIDENT:** The question is that the motion be agreed to.

**Motion agreed to.**

### *Bills*

## **ANIMAL RESEARCH AMENDMENT (RIGHT TO RELEASE) BILL 2022**

### **First Reading**

**Bill introduced, and read a first time and ordered to be printed on motion by the Hon. Emma Hurst.**

### **Second Reading Speech**

**The Hon. EMMA HURST (10:13):** I move:

That this bill be now read a second time.

On behalf on the Animal Justice Party, I am proud to introduce the Animal Research Amendment (Right to Release) Bill 2022. The aim of the bill is to give dogs and cats used in animal experimentation the right to be released. It will give these animals a chance to find a loving home where they are able to live out their lives. Many people in the community are not even aware that companion animals are still used in medical experimentation. It is a secret that the industry works hard to keep. Many universities and private research institutions have long phased out the use of dogs and cats. But in 2020 almost 1,000 dogs and 500 cats were still being kept and used in animal experimentation, just in the State of New South Wales. In 2020 no dogs and only 75 cats were rehomed. In 2019, no cats and only 30 dogs were rehomed.

These animals are subject to a wide range of invasive and often painful experiments. Although the details of these experiments are not reported in New South Wales, organisations like Humane Research Australia have exposed that in Australia beagles have been used for pharmaceutical drug testing, healthy greyhounds have been required to undergo heart surgery experiments and kittens have been intentionally deafened at one day old to test cochlear ear implants. Until very recently we did not even know how many dogs and cats were used for research in New South Wales, because these statistics were not recorded or published. That did not occur until my colleague, the Hon. Mark Pearson, introduced the first iteration of this bill in 2018. The Government did not

support the bill, leaving cats and dogs used in medical experimentation to continue to be killed at the end of experimental protocols, even if the animals were healthy and rehomingable.

However, the bill did lead former agriculture Minister the Hon. Niall Blair to mandate basic reporting around the number and fate of cats and dogs used in research. Although I was not yet a member of Parliament, I worked with the Hon. Mark Pearson to develop the 2018 bill. The Animal Justice Party is opposed to the use of animals in experimentation. The reason we introduce this bill today is because there is a shocking lack of transparency in animal experimentation taking place in Australia. That lack of transparency has some extreme consequences for animals being used for experimental purposes. It means that many animals will not have a chance to get out of experimentation facilities. They will be born into medical experimentation, and they will die there. As someone who has been heavily involved in rehoming animals used in experimentation, I can tell you that this legislation is urgently needed.

I have met and spoken to many people within the field of medical experimentation on animals. I have had some very frank and open conversations about why cats and dogs may be killed at the end of research protocols, instead of being homed into loving families. The information I received was heartbreaking. They are killed because there is a fear that the public may discover animal experimentation using companion animals is continuing, and there may be backlash towards the industry. This is simply not a reason to kill animals who have already been subject to possibly cruel and painful procedures their entire lives. To stop them from even having the chance of a normal life is unacceptable. That is why I am seeking to legislate that attempts to rehome each animal must be made, so that these animals are at least given a chance.

One dog that I have been lucky enough to meet is Buddy. Buddy is a medical experimentation survivor. Scientists used his body in medical experimentation for eight years. I do not know what was done to him. Most people do not. He is one of the very few who have made it out alive. I had the pleasure of meeting Buddy some time ago. While his life is now full of love, kindness and puppuccinos, I cannot stop thinking about the other animals like Buddy who will be born into medical experimentation, and die there. It is in honour of Buddy that we bring forward this legislation today. The statistics show that very few dogs and cats are rehomed voluntarily. There is no cap on the number of years a dog or cat can be forced into medical experimentation procedures. There is no mandatory requirement to attempt to rehome animals used in experimentation in New South Wales. While the Animal Research Review Panel has guidelines on rehoming animals used in experimentation, they are entirely voluntary and animal research institutions are not required to follow them. This is despite the fact that many people and animal rescue organisations would be willing to help find these animals a loving home.

The bill has the support of several rescue organisations that have indicated to me that they have the capacity to take in and help rehome animals from experimentation. This is a simple bill that does two main things. First, it ensures efforts are made to rehome companion animals used in medical experimentation. Secondly, it introduces provisions to ensure animals have the best chance to be suitable to live in a family home and to avoid becoming institutionalised. I will now go through the provisions of the bill in detail. As I mentioned, the bill is a reworking of the original bill introduced by my colleague, the Hon. Mark Pearson, with some refinements based on feedback we received on that bill. We have taken on many points from the second reading contribution of the Hon. Mick Veitch to the 2018 bill, and we have consulted widely with people involved in animal experimentation and animal rescue.

The bill will insert a new part 6A into the Animal Research Act 1985, which specifically deals with rehoming. Compliance with new part 6A will be a condition of an animal research authority and/or accreditation under the Act, and noncompliance can be the subject of complaint to the Animal Research Review Panel. The two key provisions in the bill are proposed sections 54B and 54C. Proposed section 54B will require animal researchers who keep dogs and cats for experimentation to take reasonable steps to prepare those animals for rehoming—including but not limited to—by providing appropriate exercise, environmental enrichment, socialisation, handling and basic training while they are at the research facility.

The sad reality is that many dogs and cats have a difficult time adapting to normal life in a family home outside the research facility. Some dogs leave medical research without ever having walked on grass or walked on a lead. They may never have seen stairs or heard loud noises and, shockingly, some have not been socialised at all with other dogs or even humans. The provision will require researchers to take reasonable steps to ensure dogs and cats are provided with this basic level of environmental enrichment, socialisation, handling and training. This is not an onerous obligation and is something all facilities should be prepared to take it on. This will not only assist dogs and cats to be rehomed but it will also improve their overall quality of life. Enrichment, socialisation and exercise are the very basics of animal welfare, and something that we should expect all companion animals to be provided with.

Proposed section 54C requires that researchers must take reasonable steps to rehome a cat or dog once the animal is no longer being used for animal experimentation or if it has been kept for animal research for three

years, whichever is sooner. Anyone who fails to take reasonable steps to do so is subject to a penalty of up to 30 penalty units. At the moment, cats and dogs can be kept for experimental purposes for their entire lives, being cycled through research experiments until they die of old age. This is simply inhumane and must not continue. Even the animals offered to rescue groups often require a long adjustment period or families who have a lot of experience with animals with special needs because the animals are so institutionalised and their bodies have been through so much. They often require extensive rehabilitation before they have any chance of living with a family. By capping the time that an animal can be used in experimentation, I believe some of those problems will be overcome.

The bill also specifies that a dog or cat must be rehomed to a suitable person or an animal rescue organisation. The two rescue groups that actively rehome animals from research right now are Beagle Freedom and Liberty Project. I acknowledge their tireless work in this space, which occurs without any government funding. While these organisations would be the natural choices for research institutions to reach out to, I hope that by requiring researchers to take steps to better prepare animals for rehoming and by limiting the time that animals can be used in experimentation, this will make it easier for other rescue organisations like RSPCA NSW, Animal Welfare League, Cat Protection Society and many other groups throughout New South Wales to also help these animals find loving forever homes. An animal can also be rehomed to a "suitable individual", which is someone who agrees to provide an animal with a home and appropriate care and who agrees not to use the animal for any further research and any other criteria set out in the regulations.

As part of taking reasonable steps to rehome an animal, the researcher will be required to give certain information to potential rehoming, including specifics on the health, physical condition and temperament of the animal in question, to assist these potential rehoming in determining whether this is an animal they can rehome. The bill also makes it possible for this information to be provided on an online database that is run by the department. That would be the most efficient and effective way to supply the information to potential rehoming. My hope is that if this bill passes the Government will set up this database. I have included a regulation-making power in the bill to ensure that can happen effectively. Proposed section 54D clarifies that a person who rehoming a cat or dog through the process must not disclose any identifying information about the researcher. Several rescue groups identified this as an important aspect of the bill to ensure it receives the approval of researchers in the space.

Proposed section 54E provides that a dog or cat is not required to be rehomed if an independent vet with relevant expertise deems that an animal is unsuitable for rehoming. The vet must provide a certificate stating the reasons the animal was deemed unsuitable, and that document must be retained by the research facility as part of its record-keeping obligations. The intention of this proposed section includes, for example, a situation where it would be cruel to keep an animal alive. It would not include aspects such as the age of the animal or behavioural qualities such as timidity. The research facility must also keep records of the reasonable steps it has taken both to prepare an animal for rehoming and to rehome the animal, including records of its communications with potential rehoming and who the animal has been rehomed to.

The bill also builds on the current reporting requirements around cats and dogs used in medical experimentation and will require reporting of the number of cats and dogs that are rehomed as well as the number that are unable to be rehomed or are deemed unsuitable to be rehomed, including a summary of the reasons why. The bill will apply to dogs and cats currently being used in animal experimentation three years after the date of assent to ensure that it has a smooth transition into effect and to avoid a situation where there are suddenly too many dogs and cats for animal rescue organisations to take on. For any new protocols that are approved, the bill will take effect immediately on the date of assent.

The Parliamentary Counsel's Office has advised that the current reporting regime set out in section 24 of the Animal Research Regulation is not clearly supported by any regulation-making power in the Act, so we have inserted that power into the bill. The bill makes other minor changes concerning the regulations, including clarifying that a licensed animal supplier cannot accept or use an animal that has previously been used for experimentation. This is a straightforward bill that I am sure all honourable members can get behind and support. The community will never accept the killing of healthy companion animals simply because an industry wants to avoid transparency. Giving these animals the opportunity to find a loving forever home is the bare minimum that we can do for them. It is time to enshrine the right to release.

**Debate adjourned.**

*Documents***NEW INTERCITY FLEET****Production of Documents: Order**

**The Hon. DANIEL MOOKHEY:** I move:

That private members' business item No. 1819 outside the order of precedence be considered in a short form format.

**Motion agreed to.**

**The Hon. DANIEL MOOKHEY (10:27):** I move:

That, under Standing Order 52:

- (a) there be laid upon the table of the House within five days of the date of passing of this resolution the following documents created since 22 February 2022, in electronic format if possible, in the possession, custody or control of the Premier, Minister for Finance and Minister for Employee Relations, Treasurer, Minister for Transport or Minister for Regional Transport and Roads:
  - (i) all documents regarding the negotiation of any enterprise agreement or award that applies to Sydney Trains or NSW Trains;
  - (ii) all legal advice regarding the negotiation of any enterprise agreement or award that applies to Sydney Trains or NSW Trains;
  - (iii) all documents regarding the modification and operation of the Mariyung Fleet; and
  - (iv) all documents regarding the media conference held by the Minister for Employee Relations and the Treasurer on Thursday 12 May 2022.
- (b) there be laid upon the table of the House within seven days of the date of passing of this resolution the following documents created since 22 February 2022, in electronic format if possible, in the possession, custody or control of the Department of Premier and Cabinet, Treasury, Transport for NSW, NSW TrainLink or Sydney Trains:
  - (i) all documents regarding the negotiation of any enterprise agreement or award that applies to Sydney Trains or NSW Trains;
  - (ii) all legal advice regarding the negotiation of any enterprise agreement or award that applies to Sydney Trains or NSW Trains;
  - (iii) all documents regarding the modification and operation of the Mariyung Fleet; and
  - (iv) all documents regarding the media conference held by the Minister for Employee Relations and the Treasurer on Thursday 12 May 2022.
- (c) there be laid upon the table of the House within seven days of the date of passing of this resolution all legal advice regarding any application to the Fair Work Commission or the NSW Supreme Court that affects Sydney Trains or NSW Trains, in electronic format if possible, in the possession, custody or control of the Department of Premier and Cabinet, Treasury, Transport for NSW, NSW TrainLink or Sydney Trains; and
- (d) any legal or other advice regarding the scope or validity of this order of the House created as a result of this order of the House.

I see little controversy about this call for papers. I cannot see why the Government would have any reason to oppose it because, in truth, it will ensure that the House can validate the statements made by the Minister for Finance and Employee Relations and the Treasurer at the rather spectacular press conference that took place last Thursday. We can infer from the answers that were provided by the Minister for Regional Transport and Roads to questions that were asked by the Opposition in question time yesterday that he had not been aware that the press conference was to be held. I am sure he would be interested in seeing these documents so that he can be across the biggest dispute that is currently taking place in his portfolio.

The Government told us that the new intercity fleet would be an amazing transformation to our rail network. We have since learnt that the trains bought by the Government did not fit the tracks, could not climb the steep incline on the Blue Mountains line and could not fit through the tunnel, and that has required significant modification to the rail network at great public expense. We know also that the fleet, as it is, is more than \$1 billion over budget and running late. The project was running late before disruptions to the global supply chain and the arrival of the fleet from South Korea is running even later. Labor has repeatedly made the point that much of the cost that has been incurred and many of the problems that have arisen with the new intercity fleet could have been avoided if the Government had built those trains in Australia, especially at the UGL site in Taree, in the electorate of the member for Myall Lakes, Stephen Bromhead.

Equally, we could have created many jobs and delivered these projects much cheaper. The cost saving of the Government going offshore to South Korea to buy these trains has already been destroyed. That is before we get to the next set of changes required to make these fleets operational. I point out that the result is no surprise, given that former Premier Berejiklian said that New South Wales is not good at making trains. Clearly, it is not

the case that New South Wales is not good at making trains. It is the case that this Government is bad at buying them. That brings me to my final point, which is that we want to see these trains operate. It is disappointing. Transport for NSW and the Rail, Tram and Bus Union had reached a consensus model that would see the first sets enter revenue service by December this year.

**The Hon. Damien Tudehope:** How do you know that?

**The Hon. DANIEL MOOKHEY:** I know that because the letter that the regional transport deputy secretary sent to the Rail, Tram and Bus Union on Thursday morning said quite clearly, "We will be using as a priority for consideration the interim operating model that would see the first trains enter revenue service by December." That is not my quote. That is not my assertion. That is directly from the letter that the deputy secretary sent.

**The Hon. Damien Tudehope:** Why wouldn't you want it done next week? Why wouldn't you want them running next week?

**The Hon. DANIEL MOOKHEY:** That was until this particular Minister, who tries to ambush me now with pointless interjections, ambushed these negotiations last week. Again, if the Government has nothing to hide, it should support this motion. The truth is that the reason why this fleet is not operational is that this Minister, who knows nothing about railways, decided to put his beak where it was not welcome by ambushing the Minister for Transport, ignoring the Minister for Regional Transport and Roads, blindsiding the transport department and embarrassing himself ever since that performance. I hope that this Standing Order 52 motion does not attract much controversy. I am sure it is something that the entire House can get behind. I commend the motion.

**The Hon. DAMIEN TUDEHOPE (Minister for Finance, and Minister for Employee Relations) (10:31):** I have heard some rubbish in my time in support of a Standing Order 52 motion, and this member has a history of bringing these applications. Generally he takes a virtue-signalling approach and says, "We want to hold the Executive to account. This is all about transparency." Well, this is the most egregious Standing Order 52 motion that this member has brought. He knows it is egregious. It paints him as merely the craven lackey of the union movement. He comes in here, a craven lackey, to do what they want. We had a motion two years ago in which he sought all the Government briefing notes in respect of an Industrial Relations Commission application. What he wanted to do, in fact, was give those briefing notes to the opponents to make sure—

**The Hon. Daniel Mookhey:** Point of order: I appreciate my weekly character assessment from the Minister. I will miss it during the next few weeks. But the Minister should be directly relevant to this motion, not to one that the House passed two years ago. Equally, he should not reflect on a decision of the House.

**The PRESIDENT:** The Minister has the call.

**The Hon. DAMIEN TUDEHOPE:** That motion emboldened him to bring this one. This is not about transparency. It is about putting a brief in front of his union mates. They pick up the phone and say, "Daniel, we need all these papers so we can run our negotiations and get some publicity about the way we have conducted these negotiations." That is what this is about. It is not about transparency. It is about this member and members opposite abusing the processes of this House to satisfy the demands of those who give them orders: the puppet controllers in the union movement. They direct all members opposite, who had generally been members of unions before they got here. They all take the commands.

**The Hon. Mark Buttigieg:** What an indictment that is! Representing workers. What an indictment!

**The Hon. DAMIEN TUDEHOPE:** There he is. The Hon. Mark Buttigieg from the Electrical Trades Union wants to interject because his puppet master has told him what to say in this place. He has never had a thought in his life, other than the ones that the union controllers tell him to have. I have nothing to hide in relation to those union negotiations. I have participated in them. I will tell the House right here and now that I told the union that I could not support a proposal that involved the alteration of a perfectly functional, safe and operating train. I was not prepared to go to the Expenditure Review Committee and recommend a proposal to spend a billion dollars altering a perfectly safe train. On that basis— [*Time expired.*]

**The Hon. SCOTT FARLOW (10:35):** I come as the peacemaker in this negotiation between the union and the Minister.

**The Hon. Damien Tudehope:** Puppets.

**The Hon. SCOTT FARLOW:** The union puppets, as the Minister says. But I am looking for peace, so I will move an amendment to the motion. I move:

That the question be amended by:

- (1) Omitting in paragraph (a) "five days" and inserting instead "28 days".

- (2) Omitting in paragraph (b) "seven days" and inserting instead "28 days".
- (3) Omitting in paragraph (c) "seven days" and inserting instead "28 days".

The Hon. Daniel Mookhey has asked why anyone would refuse the motion before the House. When looking at what is reasonable for this House, of course I side with the Leader of the Government. But I understand the numbers in this place, and I submit to members of the crossbench that it is completely unreasonable to request that this information be handed over in five days or seven days. That is not in any way, shape or form realistic. In light of the principles of this House and its respect for the operation of Standing Order 52, the 28-day time frame is much more reasonable for the Government to be able to comply with the motion. I know that we will debate that more tomorrow when we look at our standing orders. I move the amendment for that reason. I seek in particular the support of the crossbench, but also of the Opposition, on this reasonable amendment.

**The Hon. DAMIEN TUDEHOPE (Minister for Finance, and Minister for Employee Relations) (10:37):** I speak to the amendment. The Hon. Scott Farlow has made an astute observation. The fact that it was necessary to move this amendment really bells the cat on the manner in which this particular member opposite operates and how those who are dictating to him operate. He comes to do their union bidding in this place and, quite frankly, it is a disgrace. He will say, "Just come and talk to us. We are reasonable on this side. Come and talk to us about reasonable amendments." But, no—

**The Hon. Adam Searle:** Why didn't you call?

**The Hon. DAMIEN TUDEHOPE:** We did. We called and asked for this. Before we came, we had the discussion. Guess what? He said no. Why? He said, "Because the union told me not to." The union wants the documents a bit earlier than 28 days. He said, "The union told me not to. That is why we are demanding them in five days." It is not about what is reasonable, and that is why it is an abuse of the processes of this House to ask for this amount of documentation within that time period. The member knows it, but he is under instructions from others about the time limit to impose for these documents. That is so he can use them for the nefarious purposes which he has—or, not necessarily him, but that they have—for these documents. That is why he has moved the motion. It is an abuse of a process of this House to ask for a manifestly large number of documents in a very short period. It is not for the purposes of holding the Executive to account. It is for the purposes of satisfying some union demand in relation to how those documents can be used. It is like going into court and already having the brief of the people one is negotiating with or who one's opponents are—imagine having that. It gives a bit of an advantage, does it not? I see the Hon. Adam Searle nodding his head. He agrees that if I had my opponent's—

**The Hon. Penny Sharpe:** Point of order—

**The Hon. Adam Searle:** Point of order—

**The DEPUTY PRESIDENT (The Hon. Wes Fang):** I will hear the point of order of the Leader of the Opposition first.

**The Hon. Penny Sharpe:** I know the Minister is having way too much fun but he should not be commenting on what other members in the Chamber are doing. He should be directing his comments through the Chair and he should not be verballing members in the debate.

**The DEPUTY PRESIDENT (The Hon. Wes Fang):** Noting the small amount of time left, I uphold the point of order. The Minister will direct his comments through the Chair.

**The Hon. DAMIEN TUDEHOPE:** In conclusion, the fact that Labor members would oppose the Hon. Scott Farlow's reasonable amendment shows that they are intent on abusing the processes of the House. I urge members to oppose the motion but, if they want to, to support the amendment.

**The Hon. DANIEL MOOKHEY (10:40):** In reply: The Opposition will vote against the amendment. We stand by providing this House with more notice than perhaps this Minister did to his own transport department when it comes to the subject matter of this order for papers. As for the multiple character assessments that Opposition members received from the Leader of the Government, passengers want to know about this issue and the public wants to know about it. The Minister has made certain controversial claims. He can peddle his conspiracy theories as much as he wants when it comes to this issue. To be clear, we will not take lectures from a government that does the bidding of PremierState in every instance, particularly from a Minister who is best friends with Michael Photios.

**The Hon. Damien Tudehope:** Point of order: I am not best friends with Michael Photios.

**The DEPUTY PRESIDENT (The Hon. Wes Fang):** There is no point of order.

**The PRESIDENT:** The Hon. Daniel Mookhey has moved a motion, to which the Hon. Scott Farlow has moved an amendment. The question is that the amendment be agreed to.

**The House divided.**

Ayes .....15  
 Noes .....21  
 Majority.....6

**AYES**

Amato  
 Barrett (teller)  
 Cusack  
 Farlow (teller)  
 Farraway

Franklin  
 Mallard  
 Martin  
 Mitchell  
 Nile

Poulos  
 Rath  
 Taylor  
 Tudehope  
 Ward

**NOES**

Banasiak  
 Borsak  
 Boyd  
 Buttigieg (teller)  
 D'Adam (teller)  
 Donnelly  
 Faehrmann

Field  
 Graham  
 Higginson  
 Houssos  
 Hurst  
 Jackson  
 Mookhey

Moriarty  
 Moselmane  
 Pearson  
 Primrose  
 Roberts  
 Sharpe  
 Veitch

**PAIRS**

Fang  
 Maclaren-Jones

Secord  
 Searle

**Amendment negatived.**

**The PRESIDENT:** The question now is that the motion be agreed to. Is leave granted to ring the bells for one minute?

**Leave granted.****The House divided.**

Ayes .....21  
 Noes .....15  
 Majority.....6

**AYES**

Banasiak  
 Borsak  
 Boyd  
 Buttigieg (teller)  
 D'Adam (teller)  
 Faehrmann  
 Field

Graham  
 Higginson  
 Houssos  
 Hurst  
 Jackson  
 Mookhey  
 Moriarty

Moselmane  
 Pearson  
 Primrose  
 Roberts  
 Searle  
 Sharpe  
 Veitch

**NOES**

Amato  
 Barrett (teller)  
 Cusack  
 Farlow (teller)  
 Farraway

Franklin  
 Mallard  
 Martin  
 Mitchell  
 Nile

Poulos  
 Rath  
 Taylor  
 Tudehope  
 Ward

**PAIRS**

Donnelly  
 Secord

Fang  
 Maclaren-Jones

**Motion agreed to.****YOUTH PROGRAMS****Production of Documents: Order**

**The Hon. MARK BANASIAK:** I move:

That private members' business item No. 1776 outside the order of precedence be considered in a short form format.

**Motion agreed to.**

**The Hon. MARK BANASIAK (10:58):** I seek leave to amend private members' business item No. 1776 outside the order of precedence for today of which I have given notice by omitting "21 days" and inserting instead "35 days".

**Leave granted.**

**The Hon. MARK BANASIAK:** Accordingly, I move:

That, under Standing Order 52, there be laid upon the table of the House within 35 days of the date of passing of this resolution the following documents created since 1 January 2020 in the possession, custody or control of the Department of Communities and Justice; the Department of Education; the Department of Regional NSW; Ministry of Health; the Deputy Premier, Minister for Regional New South Wales and Minister for Police; Minister for Education and Early Learning; Minister for Families and Communities and Minister for Disability Services; Minister for Enterprise, Investment and Trade, Minister for Tourism and Sport and Minister for Western Sydney; the Attorney General; the Minister for Health; the Minister for Women, Minister for Regional Health, and Minister for Mental Health; or the Minister for Aboriginal Affairs, Minister for the Arts, and Minister for Regional Youth, relating to youth and social welfare programs for Coonamble, Walgett, Bourke and Brewarrina:

- (a) for all youth support programs available:
  - (i) any document disclosing all youth programs available set out by program, recipient and agency;
  - (ii) all documents relating to funding strategies;
  - (iii) all documents relating to reporting requirements; and
  - (iv) all documents relating to performance reviews.
- (b) for all education support programs available:
  - (i) any document disclosing all education support programs available set out by program, recipient and agency;
  - (ii) all documents relating to funding strategies;
  - (iii) all documents relating to reporting requirements; and
  - (iv) all documents relating to performance reviews.
- (c) for all crime prevention programs available:
  - (i) any document disclosing all crime prevention programs available set out by program, recipient and agency;
  - (ii) all documents relating to funding strategies;
  - (iii) all documents relating to reporting requirements; and
  - (iv) all documents relating to performance reviews.
- (d) for all sports programs available:
  - (i) any document disclosing all sports programs available set out by program, recipient and agency;
  - (ii) all documents relating to funding strategies;
  - (iii) all documents relating to reporting requirements; and
  - (iv) all documents relating to performance reviews.
- (e) any legal or other advice regarding the scope or validity of this order of the House created as a result of this order of the House.

Youth and social welfare programs in the bush often create the difference between a successful and functioning member of our community and someone who breaks the law. These programs are vital to electorates like Barwon that experience disadvantage on several fronts: isolation, high unemployment, poor health and allied services, and an education system that often works against them. The western river towns of Coonamble, Bourke, Walgett and Brewarrina are in this group of isolated towns that are disadvantaged on many fronts, and the disadvantage is compounded by a government that refuses to take meaningful action.



The Barwon electorate is now in the safe hands of the Shooters, Fishers and Farmers Party's Roy Butler, which is why I bring the matter before the House today. Prior to Mr Butler's representation, towns like the four western river towns I have mentioned have been neglected. We cannot simply throw money at a problem and expect it to get better, regardless of how good it might make the Government look in the budget or on social media.

I have had many conversations with local service providers, senior police, council staff and councils and, most importantly, with community members in the electorate of Barwon who have similar and grave concerns about government-funded youth programs in their communities. They know that those programs exist within their communities, but in many instances they do not know what they do or how they contribute. They know a lot of money is going in through the youth programs and service providers, but not a lot is coming back out. We know that because the metrics say the situations in those towns are getting worse. The "shell" service providers are enabled by a lazy government that has no checks or balances in place once the money leaves the coffers. The Shooters, Fishers and Farmers Party wants accountability.

If the Government is going to be our primary source of funding for social and youth programs, we want it to take its role seriously. We want to know exactly what youth support programs, education support programs, crime prevention programs and sports programs are actually available in those towns. We are being told the names of some of the shell providers. I will not say them in this place because it is not a witch-hunt. But it is important that we get to the truth, as the community concerns are valid. Those who have approached the Shooters, Fishers and Farmers are community leaders, who are actively trying to help their communities, feel let down and betrayed by the National Party over a prolonged period. They need clarity on what they can offer the youth in their regions, so that they can provide sustainable change to kids who desperately need it. We look forward to renewed community ownership of the solutions. This order for papers is key to that.

**The Hon. BEN FRANKLIN (Minister for Aboriginal Affairs, Minister for the Arts, and Minister for Regional Youth) (11:01):** The Government opposes the motion, but not because we oppose transparency or, indeed, have anything to hide on this issue at all. We oppose the motion because of its extraordinary scope, spanning across multiple ministries and departments. In fact, I will read it out: It mentions the Department of Communities and Justice; the Department of Education; the Department of Regional NSW; Ministry of Health; the Deputy Premier, Minister for Regional New South Wales and Minister for Police; the Minister for Education and Early Learning; the Minister for Families and Communities, and Minister for Disability Services; the Minister for Enterprise, Investment and Trade, Minister for Tourism and Sport, and Minister for Western Sydney; the Attorney General; the Minister for Health; the Minister for Women, Minister for Regional Health, and Minister for Mental Health; and the Minister for Aboriginal Affairs, Minister for the Arts, and Minister for Regional Youth.

This motion is a fishing expedition. We are very proud of the work that this Government has done in the communities out west in Coonamble, Walgett, Bourke and Brewarrina. A range of programs and facilities that enrich the lives of young people are currently available in those communities. For example, Coonamble has Classics Out West by the Coonamble and District Education Foundation, which promotes youth engagement, utilising friendship and lifting educational aspirations. Vacation care for Coonamble's children is provided by Coonamble Children's Services, through which children and families benefit from the availability of care, combined with entertainment and education. In Walgett, there are a range of activities that I know of immediately, like the diversionary activity programs at the Walgett PCYC that include regular afternoon, evening and school holiday activities, available to young people across the region. There is also the Grey Park Playground upgrade and the construction of new amenities buildings at Apex Park in Walgett. In Bourke, there is Bourke Kids Space and the Youth Bike Track. In Brewarrina, there is the upgrading of fencing surrounding the Brewarrina footy and cricket ovals. The list goes on.

Amazing work is being done through the Holiday Break program—run through the Office for Regional Youth—in Coonamble, Bourke, Brewarrina and Walgett. The program brings young people together to ensure that they have a sense of community and a connection to their community and country through excellent programs during the school holidays. The program gives them an opportunity to connect, to socialise, to learn new skills and to have fun during the school holidays by delivering a range of free and subsidised activities, including sport and recreation camps; training courses; creative, artistic or science activities; council-led events and many more. I think members can see the point. This Government is proud of what we are doing out in the regions. We do not oppose the intent of the motion, although we oppose the broad scope of it. We appreciate and thank the honourable member for increasing the amount of time available to produce papers, because the motion is casting such a massive net. We understand his genuine concern, I have to say, about the people of regional New South Wales. However, the Government opposes the motion because we are very proud of the work that we are doing in the west of the State.

**The Hon. PENNY SHARPE (11:04):** Labor supports this call for papers. I make the following points. There does need to be a better way for the Government to provide information to members, particularly local members, about the programs that are operating in their area. The member for Barwon has the largest electorate in the State. It is a challenge for anyone to manage the 10-hour drive just to get out there. This Standing Order 52 motion is important because it will provide the member for Barwon with important information about very vulnerable people with huge potential who live in very remote parts of this State and in smaller and regional communities. The welfare of those young people—whether it is school attainment, their contact with the justice system, or their access to housing, training or jobs—is extremely important.

Labor believes the Government should be providing more of this information. I hear what the Government has said about the scope of the motion, but Labor supports the motion because we think this information should not be hard to get. The fact that it may be hard to get shows that we have a problem in even tracking these types of programs. We support the call for papers. We understand the Government's concerns about scope. However, it should not be hard for us to put a finger on. A local member should be able to have this information easily and readily so that they can advocate strongly for the young people in their community.

**The Hon. MARK BANASIAK (11:06):** In reply: I thank the Hon. Ben Franklin and the Hon. Penny Sharpe for their contributions. It is not just about a member being able to get access to information. It is about the community members being able to get access to information and to services. The Hon. Ben Franklin rattled off a few examples of some programs that are being offered, but it is not just about offering the programs. It is actually about a proper evaluation, a proper audit of the money that we are spending on those programs and making sure that they are actually delivering outcomes, or delivering the outcomes we want. If they are not, we need to re-evaluate our investment as a State in those programs and look for other programs potentially that may deliver those outcomes. We cannot just keep throwing good money after bad. That is the key to this Standing Order 52 motion. It has come from the community. The community is concerned that some of those programs are not providing the outcomes that they would hope for, and they are rightfully concerned. It is essentially their taxpayer's money that is going to those programs. I commend the motion for audit to the House.

**The PRESIDENT:** The question is that the motion be agreed to.

**Motion agreed to.**

### *Bills*

## **VOLUNTARY ASSISTED DYING BILL 2021**

### **In Committee**

**The CHAIR (The Hon. Wes Fang):** There being no objection, the Committee will deal with the bill as a whole. I will go through each of the amendments before the Committee for consideration. The Hon. Greg Donnelly will move amendments on sheets c2022-076C, c2022-075F, c2022-093B, c2022-074A and c2022-096; Reverend the Hon. Fred Nile will move amendments on sheets c2022-101B and c2022-097; the Hon. Robert Borsak will move amendments on sheets c2022-095B and c2022-088B; the Hon. Sarah Mitchell will move amendments on sheets c2022-087A, c2022-065A and c2022-002A; and the Hon. Adam Searle will move amendments on sheet c2022-105B. I indicate to members that the secretariat and the Procedure Office have worked diligently to provide me and other members a running sheet outlining how the amendments will be dealt with in a manner that gives everybody clarity on what we are doing.

To assist that process, I indicate to members that while it is the discretion of the Chair to accept late amendments, I will be prepared to look at amendments up until question time. However, it is not my intention to accept any further late amendments after question time, unless there is clear consensus in the Chamber to do so. I put that on the table up-front so that members are aware. If members wish to move amendments, I urge them to submit them before question time. We can coordinate those amendments into the running sheet to make sure that everybody is clear on what we are doing. Other than that, amendments will only be allowed with the clear consensus of the Chamber.

**The Hon. Greg Donnelly:** Can I seek a clarification? I agree with and understand precisely what you are saying. But as we proceed through the amendments this afternoon, there may be proposals to amend amendments following discussions between the interested parties on this important legislation. I presume you are not saying that they cannot be dealt with?

**The CHAIR (The Hon. Wes Fang):** Not at all. I am seeking that we have a clear running sheet. If members have amendments floating around, which are ready to go to the Procedure Office, they should provide them now. We can then make sure that they are in the sequence so that people are clear on what members are voting on. To clarify: I am prepared to allow amendments to amendments to be moved as a result of the debate

today, but I am seeking that any amendments that have not been formally put on an amendment running sheet are circulated before question time so that we can make sure they are in sequence.

**The Hon. Greg Donnelly:** I am not aware of any.

**The CHAIR (The Hon. Wes Fang):** Thank you for the opportunity to clarify that.

**The Hon. GREG DONNELLY (11:12):** By leave: I move amendments Nos 1 to 3 on sheet c2022-076C in globo:

**No. 1 Decision-making capacity**

Page 3, clause 6(1)(f), line 20. Omit "in some way". Insert instead "clearly and unambiguously".

**No. 2 Decision-making capacity**

Page 3, clause 6. Insert after line 20—

- (1A) Without limiting subsection (1)(e), a patient does not have the capacity to weigh up the factors referred to in paragraphs (a), (c) and (d) for the purposes of making a voluntary assisted dying decision if the person's capacity to weigh up the factors is significantly impacted by a mental health impairment within the meaning of the *Mental Health and Cognitive Impairment Forensic Provisions Act 2020*.

**No. 3 Decision-making capacity**

Page 3, clause 6(2), lines 21–26. Omit all words on those lines.

Supporters of the Voluntary Assisted Dying Bill 2021 in the other place or in this place have consistently stressed time and time and time again that access to the provision, or the availability, of voluntary assisted dying—if the legislation is to enter the statute books in New South Wales—must be voluntary. With respect to the matter of voluntariness, it is not qualified in any way. The proponents of the legislation, this bill, have said consistently—both in the public domain and in their respective speeches in both Houses—that voluntariness is at the very heart, at the very centre, of voluntary assisted dying legislation as a general proposition and of this bill specifically. In fact, the position that they advocate for very strongly in, as I said, the public domain and before both Houses, is that it cannot and must not be otherwise.

The "cannot" and the "must not" in terms of "otherwise" are not only with respect to voluntariness and the decision of whether or not an individual wishes to proceed down the path of voluntary assisted dying as an initial starting point of their thinking process and what they decide they wish to do, but also with respect to all the other steps to be followed, through to and including the last step. To be clear: The last step—and this relates directly to the decision-making amendments that I am dealing with—relates to that the decision-making capacity is critical. What we are dealing with is a decision that is extraordinary and profound for any person to make, one which I expect and know—or at least I believe I know—no present member in the other place or, indeed, in this House has—at least to my knowledge—contemplated and wished to proceed with.

The decision is profound and significant because it involves the ending of one's life, the ending of one's mortality. That decision of the individual, which I will come to later on, with respect to their health—and I use that word in a generic sense as a general term—and their medical condition, perhaps more specifically, is most challenging in that their life, in terms of it running its normal course, will complete at some stage, perhaps in the not-too-distant future—not being able to specify that, I must add, with any specificity—and their life, if I can put it that way, is drawing to an earthly closure.

I submit that because of the consequences of the decision, the issue of decision-making capacity for a person must be elevated and looked at in the most significant way and interrogated by those who are advancing these laws. I presume that it is common ground—and, once again, this has been said and re-said by the proponents of the legislation in both Houses—that it cannot be otherwise. In other words, a person has to have the capacity to make that decision, which is the ultimate decision to end one's life. To be clear about what I am talking about, because this has been a point of debate in this Parliament, the term being used is "voluntary assisted dying"—that is the terminology used in the name of the bill—but what does that involve?

Once again I tie this back to decision-making. A person is making a decision about two possibilities. The possibilities might be separate but there may be a linkage between them, or there are options which are kept open. The first is that a person will be, under the legislation—it is a possibility—provided assistance to end their life: to kill themselves. I will not get into the debate of whether or not we call it "suicide". On any plain understanding of the dictionary definition of the word it is suicide, but the proponents of the bill refuse to acknowledge that. This is a person killing themselves with the assistance of another person. Under the bill "another person" is a doctor or nurse practitioner. That is to be done, and is done, by that person drinking a lethal poison and their life being extinguished.

The other possibility is that you will have—once again, this is part of the decision-making because you are looking forward about what is going to happen. Sorry, I should clarify for members that the assistance is given to drink that poison and the person does it themselves, compared to the euthanising; the term "mercy killing" has been used in other circumstances. You will have the doctor or the nurse practitioner—one or the other—euthanise the person themselves. That is normally done by lethal injection. Those are the two possibilities that exist, which are beyond the person's mind when they are no doubt thinking about ending their life and this matter of decision-making capacity.

As I have said, the supporters of the bill stress that access to its provisions is meant to be voluntary. For this to be the case, the bill quite plainly needs to ensure that a person has that decision-making capacity relevant to the making of what is an irreversible decision to end their life in the ways that I have described. The three amendments I propose are grouped together because they relate to this matter itself. In my submission to the Committee, these three amendments to proposed section 6 of the bill improve and enhance the way in which decision-making capacity by the individual is handled. I use that term "handled" as a generic term for "managed", "dealt with", "part of their consideration"—what that process actually will involve. As all members know, the bill provides for what is an iterative set of steps to be taken, with that commencement point of the decision-making by the individual through to the ending of their life by drinking a lethal poison or being injected with a lethal poison.

My first amendment deals with the capacity of a person to communicate their decision, which quite fundamentally—there can be no disagreement about this, surely—has to be done very clearly. If the second step is to follow the first step, there can be no question of that whatsoever if we are talking about a set of one-way doors. I note that at points during the whole process a person can decide not to proceed, but let us take it that we are debating the example of a person proceeding through all steps to assisted suicide or euthanasia. This decision-making is incredibly important. The bar that is set in regards to the current provision in section 6 (1) (f) is an extraordinarily low bar, hence the proposal of my amendment. Currently the words in the bill provide that a patient has decision-making capacity if they have the capacity to:

- (f) communicate a voluntary assisted dying decision in some way.

It says, "in some way". I studied the dictionary at the back of the bill, as I am sure all members have done. Members must understand, of course, that these definitions are critically, fundamentally important to safeguard individuals from being unintentionally drawn into this net that would involve assistance with suicide and euthanasia. The words "in some way" are not dealt with in the definitions as I read them. We are left with a phrase—"in some way"—which has no definition at all. It does not even have, dare I say, guidelines or notation or attempts to explain what that might be.

With respect to that—and my amendment is dealing with this to, in fact, challenge those words "in some way" with some alternative words—members would think that at the very start it would be set up, if I could describe it in those words, to make it very clear that the person wants to proceed down this track. In terms of offering their expression of where they wish to proceed with this—whether or not they ultimately go through with it is another point—I find "in some way" completely vague. What does it mean? Does it mean that they say something? Does it mean that they wave or indicate with a hand signal? Does it mean that they write something down? Does it mean that they use information technology and perhaps write on an iPad or in a text form or whatever? The term "in some way" is in fact bland and vanilla and actually has no practical meaning whatsoever. It really is whatever someone wants to imagine it to be. That is the reality.

The bill does not provide any guidance about "in some way"; it simply states those words. That is open to what anyone wants to interpret. We have this problem, whether it starts with the person at the commencement, who I understand is called a care navigator, right through to that very final decision. It is my submission that the phrase "in some way" may be sufficient for our grandmother or our grandfather to indicate in some way a preference if we are asking if they would like a cup of tea or coffee. But if our grandmother or grandfather is considering that she or he wants their life ended by lethal injection or drinking a lethal poison, surely we should require the answer to be given clearly and unambiguously. If this is voluntary and a person's intention is to end their life—and the proponents of the bill say time and time again that this is all they are interested in: capturing those individuals and nobody else. In fact, in his speech closing off the second reading debate, the Hon. Adam Searle concluded by saying, as I understand it—I can check the *Hansard*—words to the effect that this bill is tight and robust and will not capture people who otherwise are not intended to be caught by the legislation. These are my words; I am paraphrasing. I ask the Hon. Adam Searle whether that is the case.

**The Hon. Adam Searle:** Yes, that is my case.

**The Hon. GREG DONNELLY:** No-one at all, not one person, who otherwise would not want to be caught in a scenario of being drawn down that path, because of the robust safeguards that commence at the

decision-making process at the very start, can possibly be drawn into this procedure, which takes us through to its conclusion. If our grandmother or grandfather no longer has the capacity to communicate their decisions clearly, clear and unambiguous communication must be important because of what follows. Let us be clear: We have all had experiences with death and dying. All members would have experienced that, probably many times over and sometimes in most difficult and challenging circumstances, not just for the person who will be deceased but also for the individuals, families and friends going through the great challenges associated with that. In my submission my amendment, if supported by the Committee, will lessen the risk of a wrongful death under the Crimes Act in New South Wales based on a misunderstood or misinterpreted communication of a decision "in some way", by requiring a person to have the capacity to communicate their decisions clearly and unambiguously. I will return to that later.

I will move on to my second amendment in this grouping. It seeks to insert new subclause (1A). I expect that members have had the opportunity to read my proposed insertion. I will not read it. Hopefully members have looked at it and studied its implications. The amendment provides—and I put this to the Committee—that, when weighing up the information or advice required to be provided under the proposed legislation for the person to exercise the very clear, unambiguous and certain decision of wishing to end their life by assisted suicide or euthanasia, the matters involved in making such a request under the bill and the effects of a decision under the bill are central in ensuring that any decisions are voluntary.

The criminal law treats people differently when their capacity to weigh up relevant factors in their actions is significantly impacted by mental health. It considers them as less responsible for their actions due to that impairment. I am sure it is common ground, whether you support the legislation or not, that it is absolutely unacceptable and could not be contemplated as being acceptable for a person, in terms of this first stage of the decision making, to make those decisions while mentally impaired in any way, shape or form. Those decisions would no doubt weigh very heavily on them because they know where it potentially may end. Mental impairment should immediately be a basis to effectively stop the whole thing. That would include advising the individual in an appropriate fashion that because of their health, welfare, wellbeing and the decision that they are contemplating, their mental health and the state of their particular condition must be seriously considered in the decision to end their life by assisted suicide or euthanasia.

The criminal law in New South Wales as it currently stands—and this is the case in other jurisdictions as well—focuses very clearly and sharply on, in effect, flagging and consequently protecting people who have a mental health condition. I use the word "protecting" generally speaking. Through that identification we know that we do not want a person who has such a condition to put themselves in harm's way, whether they be walking out into the traffic on George Street or whether it means a decision with respect to ending their life by assisted suicide or euthanasia. It is my view that we as a society have already recognised and have done so for not just years but decades—and I would suspect, if we want to go back and do this work thoroughly, that it is perhaps centuries in one form or another—that our laws should always, when it comes to people who have a mental health condition, seek to assist those individuals to guide, protect and embrace them and ensure that they do not inadvertently make a decision that, in this particular case, is the most profound decision that anyone could make in their life.

I think, and I hope honourable members will agree with me, that the bill should do the same. The bill should do no less than reflect the societal desire to respect those individuals as human beings. We should do that for all human beings. But beyond that, we must seek to ensure that they do not go down a particular path, which is a life-ending path, and that, accordingly, we put into the legislation a new provision that will embrace that societal desire to protect our vulnerable so that they do not find themselves in harm's way. What else could we possibly want as a society? None of us wants an individual to make such a decision. As I said, those supporting the legislation have been absolutely crystal clear that that is not their intention with respect to the way in which they want the legislation to operate. The bill should do the same. The bill must acknowledge that mental health impairments, such as, for example, bipolar disorder or profound depression—actually, it does not need to be profound; it can just be depression—can affect an individual's judgement. All members know that. I will not elaborate on that.

Some members in this House are medically trained. There are no medical doctors in the House as far as I know, but there are members who have medical training from past careers. Those members know that a mental health impairment can affect the decision-making of an individual and the ability of that individual to make a judgement. What more significant judgement could be associated with this critical first step of decision-making than a very clear capacity in one's mind to make that decision? If there is impairment there at all, it should be red flagged. Ideally, it should be seen and diagnosed. But certainly it should be picked up at the earliest stage of the procedure. It must be a proviso. It acts as an ability to then, through that, talk to an individual about the circumstances of what they are considering.

We ought to try to prevent suicide, in my view. I believe we share this view with those who support the proposed legislation; although they refuse to acknowledge that this is suicide. Let us say that we agree that it is ending life with one's own hand or by euthanasia, as the case may be. We can offer the person with a mental impairment—whatever it may be—help and understanding, particularly with respect to the fact that the individual could be dealing with suicidal ideation. One could spend a long time talking about this, but I do not intend to do so. I just make this point: I think everyone has heard of the five stages of grief, which are generally understood and accepted, although some people do not necessarily agree with the exact five stages. They are what one goes through if they find themselves significantly affected by a matter that is before them. Something has happened which—without going through examples because you can imagine them—will be and can be nothing less than the source of the most extraordinary grief for a human being.

That is grief I am sure none of us hope to ever find ourselves in. I will not go through those five stages now, as I think we are familiar with them. As one works through them, it is generally understood that it is normal for a number of people to wish they could end it all. Because of the circumstances that they find themselves in, they wish they could end it all. It is a source of relief for them. We understand that people normally move through the stages. It is normal for a person being presented with information that suggests or provides a likelihood that something will end their life. Discovering that their medical condition will cause imminent death through natural causes if it is allowed to run its course will cause them to suffer profound grief. We accept that is the case for a person. There is no debate.

We accept that from our own personal observations of people around us who have died in those sorts of circumstances. Our own humanity and understanding of the human soul, the human person, when confronted with a situation like that means that we have to do all we can to help, assist and, most importantly, protect that individual. We are talking about protection, assistance and—dare I say a word that is not used much around this place—love of a person. When they have been told that their life will be concluding in the not too distant future, profound grief will flow from that. We ought to do the same for those whose impaired capacity to weigh up the relevant factors may lead them to request their life to be ended through the bill. I am sure there would be agreement about that.

The third amendment in this block would remove the presumption that a person has decision-making capacity for the purposes of the bill. It deletes clause 6 (2). The presumption in the bill may be warranted in other contexts of human experience, human interaction, human exchange and human engagement. In my view it is extraordinarily reckless, dangerous and unjustified to simply presume that a person making an irreversible decision to end their life has the capacity to make that decision. I will make particular comment in more detail on each point flowing from the points that I have already made about the decision-making capacity. I will return to the other two.

Clause 27 proposes that the doctor—we know that there are two forms of doctor involved—must make an active assessment of whether or not the patient has decision-making capacity. That is provided for. That is completely inconsistent with the starting point of the bill, where it is presumed that the person has capacity. We have a situation whereby there is a presumption that the person does have that decision-making capacity. The way the bill is drafted provides that the onus is on the doctor to prove a patient does not have decision-making capacity. That is what the doctors have to do. If I understand the bill correctly, they have to presume that the person does have decision-making capacity.

We understand that these doctors do not have to be the person's GP or treating doctor. As long as they are appropriately qualified as provided for under the legislation, they are just two doctors. There is no obligation on the first or second doctor, the coordinating or consulting doctor, to deal directly with the person's treating doctor or GP. They do not have to consult the GP to find out background information about that person's state of affairs, be it physical, mental or whatever the case may be. In other words, there is no requirement to do any checking whatsoever. It may be assumed and it could be argued—as I am sure the other side of the debate does—that of course they will check with the person's GP. There is no requirement to do so. They may if they wish to do so but there is no requirement, as I understand. I am sure the Hon. Adam Searle will correct me if I am wrong on any of these points.

So we have two doctors involved who do not know the person who is presenting to them. It is literally a person who comes through the front door, seeking access under the legislation. At that very first point of the decision-making process, we have a situation whereby there is a presumption that the person walking through the door is able to make the decision and the doctors have to prove that the person does not have decision-making capacity. I have to say, I find that extraordinary; I really do. There is an assumption that the person has capacity and then at this point the doctors are in a situation of having to make a decision about what is before them and having to prove that there is no decision-making capacity. I will come to this later, because there is a lot to get

through, but with respect to the doctors—either the first coordinating doctor or the second consulting doctor—it is up to them to make the decision about the matter of capacity.

As I have said, those doctors do not know the person from a bar of soap. The person comes through the door with a presumption of capacity and the doctors have to prove otherwise. Really, it is up to those doctors to decide what they are going to do or perhaps not do, as the case may be, in establishing the decision-making capacity or incapacity, as the case may be. The members supporting this legislation say there is absolutely nothing to worry about because there is no problem: We have got this presumption and we have got these doctors who are under an obligation that they are required to follow and that they will always do that. They say that is what doctors do. The supporters of this legislation, including the Hon. Adam Searle and others, say that we can have no fear whatsoever of a GP or either of the doctors doing anything other than what the legislation provides for in terms of the assessment of a person's decision-making capacity.

With respect to confronting the decision of a person to end their life and the assessment of their decision-making capacity linking to the work of the doctors, I find it extraordinary that we just say, "Okay, that's fine. Doctors will do that. There can be no doubt whatsoever that every GP who ever has someone walk through their door and who has to contemplate their decision-making capacity will say, 'The law provides an obligation on me', and we are certain that every doctor who is confronted with that situation, without any doubt whatsoever, will follow rigorously"—dare I say religiously—"the provisions in the bill to ensure that the assessment is made."

It is the submission of the Hon. Adam Searle that that will happen each and every time and that there can be no ability or capacity whatsoever for that to be misconstrued or misunderstood. In other words, the presumption—if I can use that word—on the GPs is that they understand as GPs, as general practitioners, what this involves in terms of how to assess decision-making capacity. In other words, built into the legislation is not only that the person has decision-making capacity and is presumed to have it, but also that the GPs know how to assess decision-making capacity. I will come back to that later, so I will not labour the point. But I make that point right now up-front because both of those are intrinsically linked.

I have to say, it is extraordinary that there is a presumption. At the end of the day, as I have said, one would have thought there is a very valid argument in a case where a person is making a decision to end their life by assisted suicide or euthanasia that in fact we do not presume that they have capacity; in fact, we do the exact opposite. We should presume that they do not have that capacity and we as legislators—and I have heard the Hon. Adam Searle use this phrase in a number of debates on other bills—should apply the precautionary rule. We should use what is called the precautionary rule.

Members of other parties often make reference to the precautionary rule that is to be followed with regard to actions that we as legislators want to build into our laws—for very good and compelling reasons—provisions that make us and ultimately the law to be precautionary. Because if the law is not precautionary, if it does not take and honour that precautionary position, there can be significant consequences, which in some cases can be extraordinary. If there was ever a category of matters where we have an extraordinary situation with catastrophic examples of the consequences—such as the premature ending of a person's life, who had made the wrong decision because the presumption was wrong at the very start—I am sure that is something that none of us wants to be associated with. None of us wants to be associated with a situation of a person being presumed to have a capacity to understand information or advice and, as the provision goes on to say, "reasonably appears".

If the phrase "reasonably appears" does not send shivers down your spine, I do not know what will. The provision in the legislation is that there is a presumption that a person has capacity to get them off the mark, and "capacity" means that they understand the information or advice that is being provided to them in regards to voluntary assisted dying. Once again, I use the example of the five stages of grief. The person, in fact, could be entering into the stage of being utterly disillusioned to the point of feeling that there is no other option for them. The provision goes on to say, "reasonably appears".

I say once again—and I am happy for the Hon. Adam Searle to correct me if I am wrong—that the phrase "reasonably appears" does not appear in the definitions clause in the bill. So what does "reasonably appears" mean? How are we to understand what the term "reasonably appears" means for a person who is about to make a decision on a presumption of ending their life by assisted suicide or euthanasia? Some members might say that "reasonably appears" cannot be misunderstood, that it is unambiguous and not unclear and there can be no misconstruing or misunderstanding what "reasonably appears" means. The provision that I am seeking to have deleted goes on to say, "and the patient is able to understand an explanation of the consequences of the making of a decision." It goes on to say in paragraph (b), which I am also seeking to have removed from the bill:

- (b) presumed to have decision-making capacity in relation to voluntary assisted dying unless the patient is shown not to have the capacity.

**The CHAIR (The Hon. Wes Fang):** According to sessional order, it being midday, I will now leave the chair and report progress.

**The PRESIDENT:** The Committee reports progress. Further consideration of business before the Committee is set down as an order of the day for a later hour. According to sessional order, business is now interrupted for questions.

*Members*

**REPRESENTATION OF MINISTERS ABSENT DURING QUESTIONS**

**The Hon. DAMIEN TUDEHOPE:** I advise honourable members that if they have questions for the Minister for Families and Communities, and Minister for Disability Services, I will be accepting questions on her behalf.

*Questions Without Notice*

**KPMG FLOOD ASSISTANCE CONSULTANCY FEES**

**The Hon. PENNY SHARPE (12:00):** My question without notice is directed to the Leader of the Government, Minister for Finance and Minister for Employee Relations. Given the Government spends hundreds of millions of dollars through government agencies to handle disaster grants, why has the Government paid private consulting firm KPMG \$1.2 million to devise ways to urgently speed up payments to flood-stricken New South Wales families?

**The Hon. DAMIEN TUDEHOPE (Minister for Finance, and Minister for Employee Relations) (12:01):** I thank the member for her question. I am not quibbling with the question—I like it—but my view would be that she should have started the question by saying, "I wish to start by congratulating the Government on the initiatives that it has taken to assist flood victims during the recent circumstances in the Northern Rivers of New South Wales."

**The Hon. Penny Sharpe:** Point of order—

**The PRESIDENT:** I uphold the point of order. The Minister has the call.

**The Hon. DAMIEN TUDEHOPE:** I am only 30 seconds in, Mr President. KPMG has been used in a variety of circumstances to assess grants on behalf of the State. Opposition members might be surprised to know that during the COVID pandemic, when the Government was delivering thousands of small business grants, small business—

**The Hon. Penny Sharpe:** Only 10 per cent for floods. That is pathetic.

**The Hon. DAMIEN TUDEHOPE:** This is important. The Government was delivering grants to save the small businesses of this State. We had to make sure that we looked after every one of those small businesses to the extent that we could while protecting the revenue of the State by ensuring that the eligibility criteria were being met. Because of the demand to process those grants quickly, there were circumstances in which we used a firm like KPMG and its personnel with experience in that field to assist Revenue NSW to assess and process those grants.

It should come as no surprise that pandemics and floods create circumstances that do not occur every day of the week. The question is not who is assessing but rather, "Does the Government have in place a process to assist the people who have been impacted by floods?" The use of a firm like KPMG to provide that assistance should be welcomed on the basis that it demonstrates the Government is absolutely committed to getting that money to the citizens of the State who need it in circumstances where there would generally be delays because of the volume of grants that are being processed. Delays are often caused by events like pandemics and floods. Rather than criticising the Government for using KPMG, the Opposition ought to acknowledge that these circumstances require those sorts of measures to assist the people of the State.

**The Hon. PENNY SHARPE (12:04):** I ask a supplementary question. Will the Minister elucidate his answer on the time frame for KPMG to make sure that 100 per cent of the available money is rolled out to those who desperately need it, given that around 15 per cent of the money has been paid out to the people who have been affected by the floods?

**The Hon. DAMIEN TUDEHOPE (Minister for Finance, and Minister for Employee Relations) (12:04):** I acknowledge the question and the import behind it because, quite frankly, I support the position articulated by the Leader of the Opposition that there is a demand that we provide assistance to the people who are in most need of it. There is not a person in this Chamber who does not support assistance being provided to the people who need it, but there is also not a person in this Chamber who does not acknowledge that there should



be eligibility criteria attached to the money that the State is spending. That is the fact of it. There is a demand for eligibility criteria and documentation to be assessed because hard-copy documentation has to be provided.

These grants are not the same as some of the earlier provided ones where we just required a statutory declaration, although we have freed up some of that criteria to process them. To the extent that there is a demand that we process them quickly, that is an absolute priority for the Government. The way the question is framed is a strategy often used by Opposition members. "Give us a date. Once we have the date that is when we will be able to criticise you because you have not met that figure." The only important question they should be asking is whether we have funding in place to support those people who have been impacted. We do.

### COOLER CLASSROOMS PROGRAM

**The Hon. CHRIS RATH (12:06):** My question is addressed to the Minister for Education and Early Learning. Will the Minister update the House on the delivery of the New South Wales Government's Cooler Classrooms Program?

**The Hon. Mick Veitch:** You can read about that in country newspapers.

**The Hon. SARAH MITCHELL (Minister for Education and Early Learning) (12:07):** I do love country newspapers and I love the Cooler Classrooms Program even more. The New South Wales Government's \$500 million Cooler Classrooms Program is a five-year program that is the first of its kind, delivering integrated smart systems to provide cooling, heating and fresh air ventilation in thousands of New South Wales public school classrooms and libraries. The Government wants to ensure it is delivering the best outcomes for students and teachers and is therefore investing in systems that provide the best long-term solution.

They are not simple systems; they are designed for each individual school, allowing them to keep the temperature and running costs low, with additional work now delivering a better system in the long run. The units will automatically shut down after-hours. An exciting component of the program is the installation of solar photovoltaic panels to offset the energy required to operate the Cooler Classrooms systems. Some 140 schools have already had solar installed as part of that component, with hundreds more underway.

The program has prioritised delivery to schools in the hottest parts of the State, with more than 600 schools that record a mean maximum January temperature of 30 degrees and above automatically eligible. That has been determined using long-term, statewide data from the Bureau of Meteorology overlaid with specific data of schools held by the department. Schools that experience a mean maximum January temperature below 30 degrees were invited to apply to the Cooler Classrooms fund, with 288 applications in round one and 447 applications in round two. An initial 918 schools were approved for delivery, including 19 sealed schools where windows are fixed due to external pollutants such as noise—for example, due to proximity to Sydney Kingsford Smith Airport.

As the rollout of the approved projects has progressed, the Government has reviewed funding opportunities to include more projects. In December 2021 the Government was able to add 37 schools to the program. The week before last I was pleased to join the member for Oxley, Melinda Pavey, at Kempsey West Public School to announce that a further 39 applications had been approved, including Kempsey West. They were very excited to hear of the air conditioning systems that they will be receiving. In total, 996 schools have now been approved for delivery as part of the Cooler Classrooms Program. This investment is on a scale never seen before in New South Wales. To date, more than 5,800 classrooms and 400 libraries have had their systems installed.

As at the end of March this year, 468 schools had been completed, 205 were in construction, 50 were at tender and 28 were in design. Of the schools in the program, 165 have been assessed as having fit-for-purpose systems in all eligible learning spaces and libraries, with the balance of schools still waiting for that work to start. As part of the Government's historic school building program, it is also worth mentioning that all new learning spaces and libraries are delivered with these systems. As we roll out the Cooler Classrooms Program, we are continuing to invest in our schools to ensure that students across New South Wales have access to modern and comfortable learning spaces. We made a commitment to deliver this five-year \$500 million program and we are getting on with it.

### ROAD TOLLS

**The Hon. JOHN GRAHAM (12:10):** My question without notice is directed to the Minister for Metropolitan Roads. What is the Minister's response to community concerns about rising tolls and the comments by the Federal MP for Mackellar, Jason Falinski, who said:

It is a double-standard that people living in metro areas have to pay for roads, whereas people in rural and regional areas don't.

**The PRESIDENT:** If members are finished having a conversation across the Chamber, the Minister has the call.

**The Hon. NATALIE WARD (Minister for Metropolitan Roads, and Minister for Women's Safety and the Prevention of Domestic and Sexual Violence) (12:10):** I thank the Hon. John Graham for his interest in tolling in New South Wales. It is such a surprise. I appreciate his interest in this matter because, as I have informed the House on many occasions, our tolling approach in New South Wales ensures that we can enable motorways to be delivered years and even decades ahead of time with the private sector absorbing the biggest initial cost. Government members are acutely aware of cost-of-living challenges for families, and that is why we can do both. We can deliver eight motorways over 10 years. We can continue to do that, bearing in mind that this Government delivers over 70 cost-of-living rebates for the people of New South Wales. Not only do we have 70 available, but we have our concierge service available.

**The Hon. Penny Sharpe:** This is not directly relevant—like every time.

**The Hon. NATALIE WARD:** If the Leader of the Opposition is not interested in cost-of-living savings for the people of New South Wales, what is she offering?

**The Hon. Penny Sharpe:** Point of order: My point of order relates to Standing Order 65 (5), direct relevance. The Minister tries this on every single time. Mr President, she is now flouting the rulings that you have been making over several weeks. I ask you to direct her to answer the question under the standing orders, as she is required to do.

**The PRESIDENT:** The time for introductory comments has passed. I invite the Minister to directly answer the question.

**The Hon. NATALIE WARD:** It is a matter that we in this Government are very proud of—that we continue to deliver large infrastructure—and that we do so by partnering with the private sector, which absorbs the biggest initial cost. We do so over time to have a process in place that both Labor and Liberal governments have signed up to. The Government has over 70 rebates available. Particularly in relation to toll relief we have free vehicle registration for drivers who have spent over the yearly threshold on tolls in the previous financial year. We have registration rebates. We have the M5 South-West Cashback Scheme.

**The Hon. John Graham:** Point of order: My point of order is direct relevance. I press the point that the Leader of the Opposition made. A Minister can answer in whatever way they choose, but on repeated questions in this area the Minister refuses to answer the questions the Opposition puts to her. That is a source of great frustration to the Opposition seeking answers.

**The PRESIDENT:** I uphold the point of order. The Minister will directly answer the question or resume her seat. Order! The Minister has the call.

*[Members interjected.]*

Order! We have just heard an exchange across the Chamber. We had a very clear cry for help from the Opposition to hear a direct answer to the question posed. It is incumbent on all members to give the Minister responding an opportunity to do so in relative quiet. As members know, I am willing to entertain the odd interjection that is constructive, but what just happened is not constructive. I ask members to respect the Minister who is answering the question. The Minister has the call.

**The Hon. NATALIE WARD:** Thank you, Mr President. This Government is committed to transforming the way that we move around Sydney. Our motorways network plays a vital role in that, as the Hon. John Graham identifies—getting commuters where they need to be fast, efficiently and with a more reliable journey. That is what we do as a government. We do not just announce; we deliver our tollways. As I have informed the House on many occasions—and I am happy to do so today—Treasury has announced a Treasury toll review, supported by Transport for NSW.

**The Hon. John Graham:** Point of order: My point of order is direct relevance. The question I put to the Minister was about those comments. The Minister has not referred at all to the comments that were made.

**The PRESIDENT:** The Minister will directly answer the question or resume her seat.

**The Hon. NATALIE WARD:** Mr President, I am not going to give a running commentary on a Federal election issue. What I will talk about in this House is what our Government is doing and what our Government is proud of and our record. That is what we do. We have provided tollways across New South Wales to ensure that people can get where they need to go. We are very clear about that, as I have told the House repeatedly. *[Time expired.]*

### ANIMAL RESEARCH AND MANDATORY REHOMING

**The Hon. EMMA HURST (12:16):** My question is directed to the Minister for Regional Transport and Roads, representing the Minister for Agriculture. Former agriculture Minister the Hon. Niall Blair stated in 2018 that if a Liberal-Nationals Government was re-elected, it would develop a mandatory code of practice for rehoming animals used in medical experimentation to be implemented by way of regulation change under the Animal Research Act 1985. Will the Minister please advise what actions he has taken to follow through on this promise and ensure the mandatory rehoming of animals used in research, particularly for cats and dogs?

**The Hon. SAM FARRAWAY (Minister for Regional Transport and Roads) (12:16):** I thank the Hon. Emma Hurst for her question that is directed to the Minister for Agriculture, who resides in the other place and whom I represent in this House. In New South Wales the use of animals for research is regulated by the Animal Research Act 1985 which sets out the requirements to protect the welfare of animals used in research and teaching. The *Australian code for the care and use of animals for scientific purposes*, which is the Australian code, is the prescribed code of practice under the Act. The Australian code forms the basis of a nationally consistent approach to the conduct of animal research and includes provisions relating to the rehoming of animals used in research, which encourages rehoming wherever possible, where it is appropriate to do so and where safeguards are in place to ensure the ongoing wellbeing of the animal.

In December 2020 the Department of Primary Industries and the Animal Research Review Panel published *Research Animal Rehoming Guidelines* to provide information to optimise responsible rehoming success and help to improve rehoming rates for animals that have been used for research and are suitable for rehoming. The Department of Primary Industries and the Animal Research Review Panel are also developing facts sheets with more detail on individual species to accompany the guidelines.

**The Hon. Emma Hurst:** Point of order: My point of order is direct relevance. The question is about the promise that was made by the former agriculture Minister about mandatory rehoming of the animals rather than the guidelines that already exist and are in place, which are simply guidelines rather than mandatory practice. That was directly in the question.

**The PRESIDENT:** It is a specialised area. Now that the Hon. Emma Hurst has drawn my attention to the distinction, I understand. The Minister's comments were introductory in nature to set the context, but I now ask the Minister to directly answer the question.

**The Hon. SAM FARRAWAY:** The Animal Research Review Panel is supplementing the rehoming guidelines with a webinar on the rehoming of research animals that will be held on 31 May 2022. In December 2018 the New South Wales Government introduced new mandatory reporting requirements for cats and dogs used in research. The research establishments are now required to report on what happens to domestic cats and dogs used in research.

**The Hon. Emma Hurst:** Point of order: Again, it relates to direct relevance. The question was about the mandatory rehoming. The mandatory reporting that the member is now referring to was already in place. That has nothing to do with the question. Given there is only one minute left, I think the member has finished giving context, and I ask that he be directed to the question.

**The PRESIDENT:** In that regard, I do not profess to be an expert in this area, but I was interested in the Minister's comments relating to the mandatory nature of the context. I think that is directly relevant. If the Minister has further information on the mandatory code of practice that had been promised in 2018, I encourage the Minister to move to that direct part of the question.

**The Hon. Emma Hurst:** To confirm, the question was about the mandatory rehoming and not about mandatory reporting, which is what the member was referring to.

**The PRESIDENT:** I thank the member for that clarification. The Minister has the call.

**The Hon. SAM FARRAWAY:** I have concluded my answer.

### REGIONAL HEALTH WORKFORCE

**The Hon. WES FANG (12:20):** My question is addressed to the Minister for Women, Minister for Regional Health, and Minister for Mental Health. Will the Minister update the House on a recent boost to our regional health workforce?

**The Hon. BRONNIE TAYLOR (Minister for Women, Minister for Regional Health, and Minister for Mental Health) (12:20):** I thank the honourable member very much for his question. I am thrilled to inform the House that this week the Murrumbidgee Local Health District welcomed an additional 65 newly graduated registered nurses, who will commence their nursing careers caring for their local communities. The graduate

nurses will join their new colleagues across 23 hospitals and community health centres in the district, including Batlow, Boorowa, Corowa, Coolamon, Cootamundra, Culcairn, Deniliquin, Finley, Griffith, Gundagai, Harden, Henty, Holbrook, Junee, Leeton, Lockhart, Narrandera, Temora, Tumut, Tumbarumba, Wagga Wagga, West Wyalong and Young. It is fantastic that nearly all of those nurses and their families are relocating to those amazing regions and making the tree change from metropolitan areas, having realised what we on this side of the Chamber know—as does the Hon. Mick Veitch—

[*Interruption.*]

**The PRESIDENT:** Order! Can someone please attend to the phone that is ringing.

**The Hon. BRONNIE TAYLOR:** Can I have an extension of time?

**The Hon. Rose Jackson:** No.

**The Hon. BRONNIE TAYLOR:** Oh, my goodness! Who doesn't want to hear about new registered nurses in the regions? Members on this side of the Chamber—obviously not those on that side—know that regional New South Wales is simply the best place to live, work and raise a family. The Murrumbidgee Local Health District took on 88 new graduates in 2018, 79 in 2019, 76 in 2020, 101 in 2021, and this year an impressive 168 new nursing graduates. Four of those graduates are from the local area, including Finley, Tocumwal, Narrandera and Wagga Wagga. The remaining graduates are from metropolitan areas, including Parramatta, Liverpool, Bungarribee, Newcastle and Chester Hill. How exciting is it that we are growing our own in regional New South Wales, with local graduates finishing their studies and remaining in their home towns to work. The really exciting thing is that we are attracting graduates who have previously resided in metropolitan areas out to our neck of the woods to experience all that the regions have to offer.

This week's graduates will add to the 54 graduates who started in February, and a further 49 will start in August. It is delightful to welcome so many new, enthusiastic fresh faces starting their careers during National Careers Week. What a great showcase for regional nursing! Previous graduates have applauded the learning opportunities that facilities across the Murrumbidgee Local Health District have offered, and they have described how wonderful it is to work and be a part of the community. Another great bit of news is that to onboard the new graduates and give them the greatest start in their careers, NSW Health has deployed 19 clinical nurse educators to guide and mentor our nurse graduates. Each new graduate will be supported by local nursing and midwifery staff, educators and managers. They will provide a comprehensive orientation and mentoring program, enabling a successful transition from university into the workplace. All of the new graduates will be exposed to a variety of clinical settings, building upon and consolidating the skills and knowledge. [*Time expired.*]

#### REGIONAL HEALTHCARE FUNDING

**The Hon. ROD ROBERTS (12:24):** My question is directed to the Minister for Women, Minister for Regional Health, and Minister for Mental Health. Given that many rural or remote hospitals in New South Wales are struggling to remain viable under the current system of activity-based or case-mix funding, will the Minister introduce a base level of funding for those hospitals in recognition of the population size and catchment and the unique needs of rural and remote health care?

**The Hon. BRONNIE TAYLOR (Minister for Women, Minister for Regional Health, and Minister for Mental Health) (12:24):** I thank the honourable member for his question on regional health. I understand the question was about activity-based funding and different funding models going forward in terms of funding rural and regional health through the local health districts. As members would be aware, I am the first Minister for Regional Health in New South Wales. We have set up a new division of regional health, which will oversee everything happening within our hospitals and community health centres and across our local health districts and will respond to the inquiry brought about by this Chamber into rural and regional health care. In terms of activity-based funding, we have been using longstanding models to work out funding models for our district. They are complex and multi-factorial. The honourable member was specific in his question to me and asked me whether I would be reviewing that particular model.

**The Hon. Rod Roberts:** The question was "Will the Minister introduce a base level of funding?"

**The Hon. BRONNIE TAYLOR:** I will not commit to introducing a base level of funding in question time, but we will continue to look into it. The Government's expense budget for rural districts is over \$8.5 billion. We will continue to have record investments into rural and regional health, and I very much look forward to progressing things through those investments. As I said, I am not going to say in question time today that we are changing the funding base model. It is not something that I have turned my head to at the moment. My areas of concentration at the moment are rural and regional workforce, improving our consultations with communities and looking at the multiple issues that arose out of the inquiry.

That is why it was fantastic to get up today and talk about the new graduate nurses coming into the Murrumbidgee Local Health District, as well as clinical nurse educators coming in to help them. I know when I was a first-year nurse at Gosford Hospital, it meant the world to have those clinical educators on tap to be able to get to you so you could do new clinical practices for the first time with the support of that clinical nurse educator. We must have a good long, hard look at workforce. I am concentrating on doing that to ensure that happens, because that is what I am hearing.

Only this Monday I met with Mr Brett Holmes and his colleagues from the NSW Nurses and Midwives' Association. I spoke to four nurses who are based out in the regions about what they felt were the important issues that were coming. I must say that activity-based funding was not raised as one of those issues. But I absolutely appreciate what the member has said. It would have been raised with him, I am sure, for him to come to question time and ask that question. I am aware that he lives in the regions himself. As I said, as I work through this portfolio and look at the main thing that I have to pursue, I will say that everything will be on the table. But at the moment that is not something that I am completely focused on.

#### **BALMAIN LEAGUES CLUB SITE**

**The Hon. DANIEL MOOKHEY (12:27):** My question without notice is directed to the Minister for Metropolitan Roads. Given the decision to hand back the Balmain Leagues Club site to the owner after four years, what is the total cost to the public of not acquiring the site, including lease costs and other compensation, that will now be payable?

**The Hon. NATALIE WARD (Minister for Metropolitan Roads, and Minister for Women's Safety and the Prevention of Domestic and Sexual Violence) (12:28):** I thank the Hon. Daniel Mookhey for his interest in the Balmain Leagues Club. I never realised he was a fan of Balmain Tigers. It is pleasing to know. I am aware that yesterday, 17 May 2022, Transport for NSW confirmed that the land acquired for the Western Harbour Tunnel construction site on Victoria Road will no longer be required and that the site will be returned to its owner. The Victoria Road temporary construction site, which includes the former Balmain Leagues Club at 138-152 Victoria Road, was first identified in 2018 to support those tunnelling activities of the Western Harbour Tunnel project. The site was then assessed by the environmental impact statement and approved in January 2021 for the construction of the Western Harbour Tunnel.

The intended use of the site was always temporary and it was always intended to be returned to the landowner in a rehabilitated condition. Transport initially worked with the stage one Rozelle Interchange contractor, which confirmed the site was not required for stage one when the contract was signed in January 2022. Following discussions between Transport and the industry partners tendering for stage two of the Western Harbour Tunnel works, it was confirmed that the site was no longer needed for the project. Transport is working with affected stakeholders on the next steps. In terms of the specifics around—

**The Hon. Daniel Mookhey:** Point of order: I appreciate the introductory comments from the Minister, but the question was specific. It was about how much the public will have to pay to not acquire the site.

**The PRESIDENT:** The Minister just used the word "specifics". I harken that perhaps that was pre-empting where the Minister was going next. Direct relevance in her answer will be of great concern to me.

**The Hon. NATALIE WARD:** The point I was reaching—and thank you for your direction, Mr President—was in relation to the specifics of the costs around those issues. They are subject to ongoing negotiations between Transport and the affected parties.

**The Hon. DANIEL MOOKHEY (12:30):** I ask a supplementary question. Again, I appreciate the answer. Will the Minister elucidate on her answer? When she says that the site is going to be returned to the owner in a rehabilitated form, does that mean that Transport will now pay to demolish the buildings, especially after the recent fires?

**The Hon. NATALIE WARD (Minister for Metropolitan Roads, and Minister for Women's Safety and the Prevention of Domestic and Sexual Violence) (12:31):** Of course I am aware of the fire that occurred. There was some media around the fire that occurred at the site. Obviously there is a process surrounding those matters and a process surrounding handing back the site. Those arrangements will be negotiated between Transport for NSW and the site owner. I am pleased that we have progress on the site, and obviously Transport will comply with those arrangements relating to the remediation of the site.

**The Hon. TARA MORIARTY (12:31):** I ask a second supplementary question. Will the Minister elucidate the part of her answer where she referred to the negotiations? Will she tell us when those negotiations will wrap up?

**The Hon. NATALIE WARD (Minister for Metropolitan Roads, and Minister for Women's Safety and the Prevention of Domestic and Sexual Violence) (12:31):** Obviously it is a process that requires the two parties to come together. In coming to those arrangements the owner of the site and Transport for NSW have processes in place that they both need to comply with. I am hopeful they will do that shortly, but it is not for me to make a conjecture or hypothesise about when that might occur. Obviously I anticipate that they will work through those accordingly and reach an agreement to remediate and return the site in due course.

#### WESTERN SYDNEY INFRASTRUCTURE

**The Hon. SCOTT FARLOW (12:32):** My question is addressed to the Minister for Metropolitan Roads, and Minister for Women's Safety and the Prevention of Domestic and Sexual Violence. Will the Minister update the House on how the Government is delivering infrastructure to secure the future of western Sydney?

**The Hon. NATALIE WARD (Minister for Metropolitan Roads, and Minister for Women's Safety and the Prevention of Domestic and Sexual Violence) (12:32):** I thank the Hon. Scott Farlow for his interest in this very important area as someone who is particularly concerned about infrastructure and the future of western Sydney. The Liberal-Nationals Government in New South Wales has made western Sydney a priority since it came into government in 2011. In fact, since that time we have appointed a dedicated Minister for western Sydney, and we are very proud of that record. You have to look no further than WestConnex for a demonstration of the New South Wales Government's commitment to improving road accessibility for western Sydney. Upon coming to government in 2011, one of our first actions was to look at how to best integrate the city following 16 years of neglect and broken promises from those very quietly sitting opposite. As part of a review undertaken by Infrastructure NSW—

**The Hon. Mick Veitch:** The President said we had to be quiet.

**The Hon. Penny Sharpe:** We can be not quiet if you like.

**The Hon. Daniel Mookhey:** Be careful what you wish for.

**The Hon. NATALIE WARD:** —it was determined that what is now known as WestConnex—they're awake—was built.

**The Hon. Mick Veitch:** You are not being relevant to your own question, let alone ours.

**The PRESIDENT:** Order! The Minister has the call.

**The Hon. NATALIE WARD:** Opposed by Labor at every turn, this Government worked diligently to turn what at one stage would have been considered too hard into a reality. Now, 10 years on, WestConnex is real: In 2017 the widened M4 opened to traffic. It was not just announced, it was delivered and opened. In 2019 the new M4 tunnels were opened, which removed traffic that for generations had clogged Parramatta Road. In 2020 the M8 opened, finally unclogging the M5, which was built too small by Labor. We had to come in and retrofit it and fix it up. Labor was trying to save money in the early 2000s. Next year WestConnex will be completed, with the link between the M4 and M5 tunnels expected to be complete and open to traffic. The project could have fallen over under any other government, but we have now delivered more than \$20 billion in economic benefits to New South Wales while creating tens of thousands of jobs at each stage, something that those opposite failed to recognise. That is what our Government has done, where others have shied away from a plan of this magnitude. They oppose them, they said no and that people should not have this infrastructure.

**The Hon. John Graham:** You're making this up.

**The Hon. NATALIE WARD:** We have held strong and delivered those projects. But it does not stop with just one project.

**The Hon. Damien Tudehope:** You've called it the "road to nowhere".

**The Hon. NATALIE WARD:** Yes, it was called the "road to nowhere". Earlier this month my colleague the Hon. Shayne Mallard and I were out at the new western Sydney airport announcing the contract award for the M12 Central and West. This 16-kilometre toll-free road between the M7 Motorway and the Northern Road at Luddenham will connect the western Sydney airport to Sydney's motorway network and realise the full benefits of having a freight and export hub in western Sydney. This project is forecast to create over 2,000 jobs during construction and will be completed prior to the airport opening in 2026. This is the record of the New South Wales Liberal-Nationals Government. We have built, and we continue to build, the infrastructure that secures the future of western Sydney.

**NEWINGTON COLLEGE**

**Reverend the Hon. FRED NILE (12:36):** My question is directed to the Minister for Education and Early Learning. On 16 May three senior students at Newington College were forced to complete the ABC Vote Compass 2022 in front of the entire student body during an assembly. The results of the questionnaire undertaken by these three students were then announced to all those gathered in the assembly. School parents were not consulted and were outraged at this event. Is the Minister aware of this incident? What action is the Minister taking to reduce political bias in schools?

**The Hon. SARAH MITCHELL (Minister for Education and Early Learning) (12:36):** I thank Reverend the Hon. Fred Nile for his question. He asked whether I am aware of the reports about what had allegedly occurred at Newington College. I am aware; I heard about it on the radio. But in terms of the specifics, as the member may or may not be aware, Newington College is not a government-run school. I am happy to take on notice that part of the question relating to what has happened at that school and see whether I can get some advice from the school or the Association of Independent Schools.

More broadly, Reverend the Hon. Fred Nile asked what the Government is doing to reduce political bias in schools. The government school policy has a very clear position that schools should be neutral, free from any political discourse. Rational discourse should be able to take place, but schools should be politically neutral. That is certainly the policy when it comes to government schools. As I said, in relation to the specifics of Newington, I am happy to take that on notice and see whether I can get more information. I may not be able to, but I am happy to try on behalf of the member.

**ICARE AND DUST DISEASES COMPENSATION**

**The Hon. TARA MORIARTY (12:37):** My question without notice is directed to the Leader of the Government, and Minister for Finance, and Minister for Employee Relations. Given the Auditor-General has revealed that icare underpaid nearly 1,000 victims of dust diseases by \$93 million, will he guarantee that icare is paying all dust disease victims their legal entitlements?

**The Hon. DAMIEN TUDEHOPE (Minister for Finance, and Minister for Employee Relations) (12:38):** I thank the Hon. Tara Moriarty for her question. I am aware of the Auditor-General's finding in relation to the Dust Diseases Tribunal. It is important that I advise the House in relation to what is occurring in relation to those findings. The report noted that outstanding dust diseases claims liability increased by \$93.9 million, which included \$39.3 million to remediate historical underpayments. All current participants in the dust diseases care scheme have been contacted and remediated, with the exception of two cases where contact is proving difficult.

Over 80 per cent of deceased estates have been contacted. Payments have commenced, with over \$21.9 million in payments already made and all remediation expected to be completed by the end of June 2022. The remainder of this \$93.9 million is not a new figure but relates to claims that will be reported in the future, which are accounted for now due to the structure of the scheme. Changes to the legislation have been drafted to address some of the ambiguity and impracticality that exists under the current Acts.

**The Hon. TARA MORIARTY (12:39):** I ask a supplementary question. Will the Minister elucidate that part of his answer where he talked about the findings of the Auditor-General and inform the House of what steps he has taken to investigate how this happened?

**The Hon. DAMIEN TUDEHOPE (Minister for Finance, and Minister for Employee Relations) (12:40):** There is always this misunderstanding, and members opposite are afflicted by this problem. The Hon. Daniel Mookhey is one of them, and it now appears the problem is contagious. They fail to understand that icare—

**The Hon. John Graham:** I don't think the problem is failing to understand.

**The PRESIDENT:** Order! The Minister has the call.

**The Hon. DAMIEN TUDEHOPE:** When you get a chance, you can ask the question. When I am giving the answer, it would be good if you did not give commentary.

**The Hon. John Graham:** I will wait until you give the answer then. Why don't you give the answer?

**The PRESIDENT:** Minister, I am not sure that is going to be terribly helpful. However, you do have the call.

**The Hon. DAMIEN TUDEHOPE:** I was hoping it would be helpful to you, Mr President.

**The Hon. John Graham:** Clearly not!

**The PRESIDENT:** Order! The Minister has the call.

**The Hon. DAMIEN TUDEHOPE:** As part of the review process of legacy systems, that is, the previous manner in which payments were being made, icare proactively reviewed the payment procedures which were used to work out compensation payments with dust diseases. Guess what? Icare tells me this stuff and that is why I am able to tell you. This review showed that there were differences in how the Workers' Compensation (Dust Diseases) Act 1942 and Workers Compensation Act 1987 were previously understood, which is how the legacy claims arrived and why payments are due to—

**The Hon. Daniel Mookhey:** Don't read their answers. One thing you should learn with icare is to never believe what they tell you.

**The PRESIDENT:** Order! I call the Hon. Daniel Mookhey to order for the first time. The Minister has the call.

**The Hon. DAMIEN TUDEHOPE:** The review identified that some of the workers in the first 26 weeks had been underpaid their weekly benefit entitlements. That has been reported to me and the process is in hand. The payments are being made and will be made by the end of June.

**The Hon. DANIEL MOOKHEY (12:42):** I ask a second supplementary question. Will the Minister elucidate that part of his answer where he talked about what icare tells him, which he can then tell us? Did icare tell him that its board was alerted to this underpayment in 2015 and simply forgot that it was underpaying the victims of the worst diseases in New South Wales to the tune of \$93 million until the upper House investigated it and drew it to the board's attention in 2020? Was the Minister told that icare simply forgot that it was underpaying dust disease victims?

**The Hon. Scott Farlow:** Point of order: Mr President, I note that you are taking a broad view on supplementary questions but that question does not seek an elucidation at all. It is in fact a new question to the Minister.

**The Hon. Daniel Mookhey:** To the point of order: The Minister made a great deal of what icare tells him. He cited this as a reason why he has not ordered an investigation. Given the Minister is happy to brag about what icare tells him, the Opposition would like to know whether or not icare told him that it was underpaying these victims for five years and simply forgot about it.

**The PRESIDENT:** I remind members of the broad approach I am taking, to use the words of the Hon. Scott Farlow, in relation to supplementary questions. Indeed, as I have previously mentioned to the House, unless a supplementary question is so far from the original question or answer as to be unreasonable I will not be ruling it out of order. The Hon. Daniel Mookhey's question is clearly a reasonable supplementary question by that test. I invite the Minister to respond.

**The Hon. DAMIEN TUDEHOPE (Minister for Finance, and Minister for Employee Relations) (12:43):** Earlier I referred to the disease afflicting Opposition members and the contagion of the disease, but the actual propagator of the disease got to his feet to make sure that he spreads it a bit further. The problem is that those opposite do not understand the fundamental structure of icare. It is separate from government—

**The Hon. Daniel Mookhey:** Point of order—

**The Hon. DAMIEN TUDEHOPE:** He does not like this answer because it exposes him unbelievably.

**The Hon. Daniel Mookhey:** Does it? My point order relates to Standing Order 65 (5), direct relevance. The question is not about the structure of icare. It is about whether the icare board told the Minister responsible for the icare board that it had ignored it for five years.

**The PRESIDENT:** The Minister was being directly relevant. He was talking about the relationship between government and the board. That is certainly relevant to the supplementary question. The Minister has the call.

**The Hon. Daniel Mookhey:** Dust victims. You are making a political point about dead dust victims.

**The Hon. DAMIEN TUDEHOPE:** A political point! Quite frankly, I find that insulting. The Hon. Daniel Mookhey should withdraw that comment.

**The PRESIDENT:** Order! I did not hear what the Hon. Daniel Mookhey said. Perhaps the member would like to elucidate?

**The Hon. Daniel Mookhey:** I am happy to. He is politicising dead dust victims, and I am not withdrawing that claim.



**The PRESIDENT:** The Minister has the call.

**The Hon. DAMIEN TUDEHOPE:** A new low has just been reached by the Hon. Daniel Mookhey. He wants to say that question time—

**The Hon. Daniel Mookhey:** You haven't met their families.

**The Hon. DAMIEN TUDEHOPE:** No, it is a new low, mate.

**The PRESIDENT:** Order! I remind members that interjections are disorderly. The Minister is trying to respond to a valid supplementary question and, indeed, the member interrupting is the same member who asked the question. The Minister will be heard in silence. The interjections are inflaming the situation. The Minister has the call.

**The Hon. DAMIEN TUDEHOPE:** The member continues to make the same mistake. Icare is independent of government. It has its own board, its own management structure and its own CEO. In fact, the CEO reports to the board and the board makes decisions and assesses risks in relation to the way icare operates. There have been multiple opportunities at estimates or other hearings to question the chair of the board or the CEO on how they administer the icare fund. My responsibility is to make sure the board acts appropriately, the CEO acts appropriately and proper policies are in place. In circumstances where I am advised of errors, it is my responsibility to make sure that they are being remediated—and I have just advised the Chamber that is exactly what is occurring.

### NATIONAL ROAD SAFETY WEEK AND SCHOOLS

**The Hon. SCOTT BARRETT (12:47):** My question is addressed to the Minister for Regional Transport and Roads. Given it is National Road Safety Week, will the Minister update the House on what steps the Government is taking to make roads safer around schools?

**The Hon. SAM FARRAWAY (Minister for Regional Transport and Roads) (12:47):** I thank the Hon. Scott Barrett for his question. It is a good and timely question considering that it is National Road Safety Week. It is a week for everyone to reflect on ways that they can help themselves and others to ensure they are safe on New South Wales roads, particularly on our regional roads. This year's theme is "Everyone has a right to get home safe, every day—no exceptions". Every child in regional New South Wales also has a right to ensure that they get to and from school safely. On Monday of this week I joined the hardworking member for Coffs Harbour, Gurmesh Singh, and the Federal member for Cowper, Pat Conaghan, to announce \$40.8 million in joint Commonwealth-New South Wales funding to improve road safety at regional New South Wales schools under the School Zone Infrastructure Sub Program, which is part of the \$540 million Road Safety Program jointly funded by the Australian and New South Wales governments.

This funding will support the rapid rollout of 500 projects at more than 350 regional schools across this State. It will see new raised zebra crossings and pedestrian islands installed to help our youngest community members cross the road safely and improve the visibility of key crossings in busy and high-risk areas. For the benefit of the House I will list some of the key projects. I joined the member for Coffs Harbour at Coffs Harbour Public School, but other projects include Cudal Public School in the Hon. Scott Barrett's part of the world near Orange, the Soldiers Point Public School in Port Stephens, the St Edwards Infants School at Tamworth—and the list goes on. That is 500 projects at 350 schools across regional and rural New South Wales.

That is not all the Government is doing to keep children safe. We are also ensuring that every New South Wales school has at least one set of flashing lights, with additional sets also installed outside many schools with multiple busy entrances. More than 6,500 school zone flashing lights are now in place across the State to warn motorists when they are about to enter a 40-kilometre school zone. We also fast-tracked our commitment of \$18.5 million to provide 300 additional school crossing supervisors. To date, 332 new supervised school crossing locations have been approved. As I have said in this place before, we are a government of delivery. I am happy to inform the House that planning for those important safety upgrades is well underway, with all projects expected to be finished in June 2023. Every child should feel safe going to school and every parent has a right to expect that their child is safe going to school. This Government is delivering on that well and truly.

### GENDER DEFINITIONS

**The Hon. ROD ROBERTS (12:50):** My question is directed to the Minister for Women. I refer to the Minister's answer to the supplementary question from the Hon. Mark Latham last Thursday, where she said that she supports both the Commonwealth and New South Wales definitions of a "woman" and that there is no contradiction in doing that. Is it not disrespectful to the four million females the Minister represents to say that she believes a woman is a self-identifying person and also a person of the female sex? Under the Commonwealth definition a man can be a woman, but under the New South Wales definition they cannot. Bearing in mind that

the Premier has no trouble identifying the definition of a "woman", will the Minister please, on her fourth attempt, give a single clear definition of the word "woman"?

**The Hon. BRONNIE TAYLOR (Minister for Women, Minister for Regional Health, and Minister for Mental Health) (12:51):** I thank the honourable member for his question and for all of his questions directed to me today. My reputation speaks for itself. If I dare say, I am a respected member of this Government and I am a respected Minister for Women. I take the job very seriously. To suggest otherwise is terribly unfair and not very kind at all. The two Acts that the Hon. Mark Latham referred to in his questioning of me are both sex discrimination Acts. I have responded to his questioning in the appropriate manner of this Chamber. Those Acts are not used to define a "woman". I do not profess to be a lawyer, and I never have, but it is perfectly reasonable to say that in my role as the Minister for Women I respect and work within both anti-discrimination Acts. If any member has an issue with those Acts, they should bring a bill before the Chamber to change them. As far as I am concerned, I work within both Acts.

In defining a "woman"—as I have said previously in this place—as a mother, as a woman myself, and as the Minister for Mental Health, I do not like to see this issue used to make vulnerable groups even more vulnerable. I am very careful with what I say. I do not want to get into an argument with the word police. I am very open about what I think, what I say and who I am personally, but I take my role as a member of this Government and an elected member of Parliament very seriously. If the member continues to pursue this line of questioning to gain points in whatever manner he may, then I say that I regard a woman as an adult female. I hope that this is the end of this matter.

#### **FUTURE TRANSPORT STRATEGY: TOWARDS 2061**

**The Hon. ROSE JACKSON (12:53):** My question without notice is directed to the Minister for Metropolitan Roads, representing the Minister for Infrastructure, Minister for Cities, and Minister for Active Transport. Who commissioned the Future Transport Strategy: Towards 2061 report?

**The Hon. NATALIE WARD (Minister for Metropolitan Roads, and Minister for Women's Safety and the Prevention of Domestic and Sexual Violence) (12:54):** I thank the honourable member for her question. I represent Minister Stokes in the Legislative Assembly but the report that the Hon. Rose Jackson refers to is a draft report. It is a draft report that is—

**The Hon. Rose Jackson:** Someone has asked for it.

**The Hon. NATALIE WARD:** Indeed. I will take the question on notice.

#### **ABORIGINAL BUSINESS ROUNDTABLE**

**The Hon. CHRIS RATH (12:54):** My question is addressed to the Minister for Aboriginal Affairs, Minister for the Arts, and Minister for Regional Youth.

**The PRESIDENT:** Order! I know some members get excited when the Hon. Chris Rath asks a question, but members will restrain themselves. The Hon. Chris Rath has the call.

**The Hon. CHRIS RATH:** Will the Minister update the House on the outcomes of the second Aboriginal Business Roundtable?

**The Hon. BEN FRANKLIN (Minister for Aboriginal Affairs, Minister for the Arts, and Minister for Regional Youth) (12:55):** The second Aboriginal Business Roundtable was held recently at Kimberwalli at Mount Druitt. It was another extremely valuable opportunity to hear from some of the State's leading Aboriginal business owners. Close to 60 Aboriginal business owners and leaders attended the event, elevating one of our Closing the Gap Priority Reform 5 commitments, which encompasses employment, business growth and economic prosperity. It is a New South Wales-only priority. The attendance was a significant increase on the 35 Aboriginal businesses that joined the inaugural roundtable in October 2021. At the business roundtable I updated attendees from the first roundtable that the New South Wales Government has opened the Closing the Gap Aboriginal Strengthening Business Capability Grants Program, directly investing into Aboriginal businesses. I also confirmed that the NSW Procurement Board is committed to auditing 5 per cent of government contracts with Aboriginal participation commitments annually.

Participants at the second roundtable travelled to Kimberwalli from right around the State. They came from a broad range of sectors, including the arts, tourism, retail, hospitality, mining, construction and IT. One of the attendees, Jasmine Newman, founded Killara Services in 2017. Just weeks ago the business took out the Telstra Best of Business Indigenous Excellence Award. Killara Services has grown into a nationally recognised Indigenous cleaning company that employs 350 people across the country, with a rate of 38 per cent Indigenous engagement across its workforce. Jasmine told us that the messages coming from those business roundtables are

to persevere and face the barriers that exist for Indigenous business owners. Business owners like Jasmine are at the forefront of transformative change. They are using their business as a vehicle for self-determination and leveraging culture, knowledge and skills as competitive advantages.

New South Wales supports more than 2,000 Indigenous-owned businesses. A priority for the Government is actively engaging with those Aboriginal business owners to understand how we can better support them and power the Aboriginal economy. For the latest roundtable we took a panel approach, with key government and non-government leaders sharing their thoughts with attendees on the current policy environment. We encouraged participants to be open and to share their thoughts, concerns and ideas, and we committed to producing a set of outcomes that will be communicated back to the group.

From the discussion I acknowledge that there is more to do to support newer and smaller Aboriginal businesses. I appreciate that the black-cladding issue remains a focus, and the definition of "Aboriginal business" needs to continue to be worked through between all levels of government. From the latest discussion I am even more committed than I was before to building and establishing trust between the Aboriginal business sector and government, and minimising barriers when it comes to procurement. With 100 per cent support from the Premier and Deputy Premier, my aim is to increase Aboriginal economic prosperity and genuinely shift the dial on our Closing the Gap reforms.

### SANCTUARY ZONE FISHING

**The Hon. MARK BANASIAK (12:58):** My question is directed to the Hon. Sam Faraway, representing the Minister for Agriculture in the other place, Mr Dugald Saunders. As raised with the Minister in budget estimates regarding a senior fisheries officer caught fishing in a sanctuary zone in Jervis Bay, what procedure does the Department of Primary Industries [DPI] have in place for employees who commit fisheries breaches and serious offences against the Act administered or enforced by DPI?

**The Hon. SAM FARRAWAY (Minister for Regional Transport and Roads) (12:58):** I thank the honourable member for his question directed to the Minister for Agriculture in the other place, Mr Dugald Saunders, whom I represent in this House. As the question is clearly well outside my portfolio area and specifically concerns an agency that is nowhere near the remit of the Minister for Regional Transport and Roads, I will take it on notice. I acknowledge that—

**The Hon. Sarah Mitchell:** It is very serious.

**The Hon. SAM FARRAWAY:** —it is a very serious question and a very specific question. I like to fish every now and then. I acknowledge the fantastic work of the Department of Primary Industries at its headquarters, which are based in the regions in Orange, its employees and the contribution it makes. I will take the question on notice and the Minister for Agriculture will provide an answer to the member.

**The Hon. DAMIEN TUDEHOPE:** The time for questions has expired. If members have further questions I suggest they place them on notice.

### *Supplementary Questions for Written Answers*

### COOLER CLASSROOMS PROGRAM

**The Hon. COURTNEY HOUSSOS (13:00):** My supplementary question for written answer is directed to the Minister for Education and Early Learning, and relates to the question about the Cooler Classrooms Program. Will the Minister provide a list of the 39 schools that were most recently announced at Kempsey West the week before last?

### *Written Answers to Supplementary Questions*

### NEW INTERCITY FLEET

In reply to **the Hon. DANIEL MOOKHEY** (17 May 2022).

**The Hon. SAM FARRAWAY (Minister for Regional Transport and Roads)**—The Minister provided the following response:

I am advised:

This question should be directed to the Minister for Employee Relations and/or the Treasurer.

**The PRESIDENT:** I will now leave the chair. The House will resume at 2.00 p.m.

*Announcements***LEGISLATIVE COUNCIL PHOTOGRAPHS**

**The PRESIDENT:** I advise honourable members that a photographer from the Australian Associated Press will be present in the press gallery today for the taking of still photographs only.

*Private Members' Statements***KOALA HABITAT**

**The Hon. PENNY SHARPE (14:01):** I draw to the attention of the Government the recent discovery of 80 koalas living in and around the Heathcote area. Dedicated locals conducting citizen science work have tracked and identified those 80 koalas. I draw that to the attention of the Government because it has an opportunity to preserve a very important wildlife corridor that supports the population that has not been described before. Koalas in New South Wales are on track for extinction in the wild by 2050—that is not up for debate anymore. It has been accepted by the Government, and the Government has put in place a bold plan to double the number of koalas. Well, it will not double the number of koalas if it gets rid of very important wildlife corridors like this.

Recently I wrote to the water Minister because there is a piece of land at Woronora Heights on which there is currently a development application [DA]. If the DA is approved, I do not think WaterNSW will build housing there; it will look to flog it off to developers so that people can live in that very beautiful part of Sydney in five houses that will be built and track right through the koala corridor. I will make a few points on that. First, the wildlife corridor exists because water infrastructure was going to be built on that land in the past but it is now no longer needed. There is an opportunity to preserve the corridor, which is about 500 metres wide and what the chief scientist has recommended for maintaining connectivity for koalas in that important area.

Secondly, there is an easy fix. All that is required is for WaterNSW to withdraw its DA, not sell the land and enter into negotiations with other agencies—importantly, Minister James Griffin's agency—to purchase or transfer the land so that it can become part of a reserve and be protected forever. Locals in the area have documented koalas using the corridor. There is a one-off opportunity to preserve the corridor for the future and it should be taken. The Government must get serious about protecting koalas. It knows there is a healthy population on the edge of Sydney, yet it continues to chip away at the corridors that are needed for koalas to live and prosper. If the Government does not get serious about protecting koalas, we are simply not going to save them. The locals care passionately for those koalas and they want them to be protected into the future. More broadly, the New South Wales Government has made a commitment to double koala numbers and to protect their habitat. It is time to withdraw the DA and turn the wildlife corridor into a reserve.

**LISMORE FLOOD RECOVERY**

**Ms SUE HIGGINSON (14:04):** I update the House on the situation in Lismore. On 28 February this year the Northern Rivers of New South Wales experienced a catastrophic climate-induced weather event. In Lismore the floodwaters resulting from that event reached more than two metres above the previous highest recorded flood levels and only 1.9 metres below the modelled probable maximum flood level, which is defined as the one-in-10,000 to one-in-100,000 year flood event and the suspected highest and biggest flood possible for the Lismore Basin. The catastrophic climate-induced weather event was a cut-off low, or a "rain bomb" as they are often described. It devastated the Northern Rivers. Lives have been lost, Lismore has been wiped off the map and it looks like the scene of a *Mad Max* movie. The upper catchment has been disfigured, water courses are in places they were not before, farmlands have been decimated and the entire Richmond River system is substantially damaged and in need of repair.

Some 8,000 buildings across the region sustained damage. There are more than 3,500 uninhabitable homes and most of the residents of those homes have become homeless or displaced, and they are traumatised. The trauma is unbelievable, and it is compounded because the community does not have any clear direction on what the recovery will look like. This month the Insurance Council of Australia and the Australian Banking Association issued a warning to Premier Dominic Perrottet, stating that we are going too slow and that the window to recover the region, particularly Lismore, is closing. Many people in the community are calling for a community-led, whole-of-catchment adaptation plan that includes fair-value buybacks and land swaps for those whose homes are now unlivable. They want to get on with their lives but they are stuck. They know they cannot rebuild because those flood events are going to happen again and again.

I was very concerned by the cold, callous and misguided comments of the Hon. Stuart Ayres, who suggested, "Choosing to live in those locations does come with a consequence, and people need to be aware of what that consequence is." Those comments are very concerning. People live where they can afford to live, and for many those flood-prone properties are the only affordable homes available to them. Those comments are cruel

in the face of the impacts of climate change, and his Government is fuelling that climate crisis through its continued insistence on approving coal and gas projects throughout New South Wales. The first victims of climate change are the vulnerable and poor. I can only hope that those comments are not indicative of the Government's actual view of the situation in Lismore and that that is not the reason why the recovery is going so slowly.

### RAMADAN

**The Hon. CHRIS RATH (14:07):** New South Wales is a wonderfully successful multicultural State. It is home to people from more than 300 cultures and between us we speak 275 languages and practise 144 religions. As a community, we set an example of harmony and respect from which the rest of the world may learn. I am always drawn to the cultural festivities and significant events that define the lives of so many of our neighbours, family and friends. A proudly multicultural State is one that recognises and promotes those occasions as opportunities from which we can understand each other. I particularly acknowledge the recent observance of Ramadan in New South Wales. Ramadan is of the utmost importance to our State's Muslim community and is the holiest month for one of the world's great faiths.

It is a time for spiritual reflection, growth and renewal, strengthened by charitable acts and time spent with loved ones. This year the Muslim community's characteristic joy was on full display, and Ramadan Nights brought the celebration to the people of Lakemba. Ramadan Nights is a food festival in Auburn that invites all of us to engage in a unique cultural experience. Countless iftar dinners saw homes and businesses share the goodness of fellowship during Ramadan. I was pleased to attend three iftar dinners among my very first parliamentary engagements.

Iftar dinners are underpinned by unity, and the breaking of bread together during Ramadan fosters togetherness among those involved. At the events I spoke of our State's resilience throughout the COVID-19 pandemic and how we owe much of today's recovery progress to the work of our diverse community groups and cultural charities. The iftar dinners symbolised our State's multicultural strengths: attendees were welcoming, proud of their cultures and keen to understand each other. I believe they represent the best parts of living in New South Wales, and I look forward to joining the community once again next year to experience this joy.

I acknowledge our State's excellent Minister for Multiculturalism, Mark Coure, who has introduced me to so many leaders within the Muslim community. I also acknowledge Oz Guney for inviting me to the MUSIAD iftar dinner at Sydney Olympic Park, Councillor Sam Elmir for inviting me to the National Muslim Community annual iftar dinner hosted by the Australian National Imams Council, Councillor Sazeda Akter and Mohammad Zaman for their ongoing friendship and leadership within the Bangladeshi community, Liverpool mayor Ned Mannoun, Sutherland shire councillor Hassan Awada and other parliamentary colleagues. I thank each and every leader of our many multicultural communities for building a shared peace in our society. The harmony we enjoy here, as demonstrated recently in the observance of Ramadan, is amongst the best in the world.

### NATIONAL ROAD SAFETY WEEK

#### APRA MUSIC AWARDS

**The Hon. JOHN GRAHAM (14:10):** I acknowledge that this is National Road Safety Week, a week to highlight the impact of road trauma and ways to reduce it. I thank the Ministers in this House who have acknowledged National Road Safety Week and, on behalf of the Opposition, I join with them to emphasise the importance of that message. As we know, every year approximately 1,200 people are killed and another 44,000 people are seriously injured on Australian roads. It is one of the realities of living in a big country and of living in a large State, especially for those in regional New South Wales. We wave off family and loved ones on a long drive but, as we do, there is often a nagging worry about the trip in the back of our minds. The familiar words are "drive safe". This week we acknowledge how important those words are.

The APRA Music Awards celebrate excellence in contemporary music, honouring songwriters and publishers who have achieved artistic excellence and outstanding success in their fields. The awards were last held on 3 May. I recognise some of the incredible New South Wales artists who were winners on the night: The Kid LAROI from Waterloo for peer-voted APRA song of the year, songwriter of the year and most performed hip hop/rap work; Budjerah from Fingal Head—an amazing new artist—for most performed R&B/soul work; and AC/DC for most performed rock work. The Wiggles picked up the Ted Albert Award for Outstanding Services to Australian Music.

I am going to claim Tones and I as a New South Wales artist, given that she rose to success busking on the streets of Byron Bay. She won most performed pop work and most performed Australian work overseas. It was beautiful to see so many of Australia's best songwriters gathered together, and these winners confirmed Sydney as the songwriting capital of the country. While the awards may have been held in Melbourne this year, it is safe to say that our New South Wales artists stole the show. We look forward to welcoming the awards back to Sydney

in years to come. Tonight the Australian Women in Music Awards ceremony is taking place in Brisbane. These are recent but fantastic awards that are much needed, recognising the value, achievements and contributions of women in all areas of the Australian music industry. Many of the finalists are from New South Wales, and I am sure that all of my colleagues will join me in wishing them the best of success tonight.

### CALLALA BAY LAND DEVELOPMENT

**Mr JUSTIN FIELD (14:13):** I bring to the attention of the House a proposal by developer Sealark to bulldoze 40 hectares of mature native forest on the edge of the coastal village of Callala Bay in the Shoalhaven. For those who do not know, Callala is a beautiful and quiet coastal village within Jervis Bay, surrounded by bushland and beaches. The proposal for 382 home lots would increase total dwellings in the Callala Bay village by a massive 30 per cent. The land was previously zoned as rural, and in the local environment plan template the change allocating a zoning was deferred because of development plans for the site. It sits alongside Jervis Bay National Park and existing residential areas of Callala.

This is mature, intact and tall coastal forest, which is a mixture of regenerated and old growth forest. The land is extraordinarily biologically diverse and teeming with threatened species such as feather-tail gliders, greater gliders, yellow-bellied gliders, eastern pygmy possums, glossy black cockatoos, gang-gang cockatoos and grey-headed flying foxes. This area mostly escaped the 2019-20 fires and is a critical refuge for threatened and other species. The proposal is subject to a biodiversity certification process, which is essentially a quid pro quo. It offers up a larger portion of land—also owned by Sealark and adjacent to the proposed development—for future protection and inclusion in the national park, in exchange for being able to develop this portion.

This is what is allowable under this Government's planning and environment protection laws. Let us be clear: There is no offset here. This would be a straight-up net loss of critically important coastal habitat. The animals that currently live in the area will have nowhere to go. There is no spare capacity in the adjacent forests for homeless animals to take up. The fires have pushed more and more animals to live and feed in what is left standing in our region. The development will result in a direct loss of habitat and a direct loss of species.

This is a massive problem on the South Coast. Developers have long ago land banked cheap forested land, waiting for a favourable opportunity to push for rezoning and development. The offset rules have opened the door for high-quality and environmentally sensitive forest to be clear-felled for housing under the guise of balancing housing needs and the environment. But there is no balance here. Occupancy rates in these coastal villages are between 30 per cent to 60 per cent. Many, if not most, are holiday homes and rentals. Prices are far from affordable and no increase in supply will reduce those prices. This is a cash grab by developers at the expense of the environment. The forest should not be destroyed for housing, and there is no entitlement for it to be developed. Just because there is a process that allows it to be considered, that does not mean it should be allowed. Any rezoning and development application should be rejected, and the Government should work to bring the entire area into the adjacent Jervis Bay National Park.

### LABOR FEDERAL CANDIDATE FOR PARRAMATTA ANDREW CHARLTON

**The Hon. SCOTT FARLOW (14:16):** With a Federal election this weekend, I talk about integrity and respect for our constituents. As elected representatives, we have an obligation to be truthful with the people we seek to represent. There are serious questions to answer about whether Labor's Federal candidate for Parramatta has misled the Australian Electoral Commission [AEC] through the nomination process. In Andrew Charlton, Labor has installed a candidate who has never lived in Parramatta, never worked in Parramatta and cannot name three restaurants in Parramatta. But more concerning are the serious questions about what he has declared to the AEC about where he lives.

Nominating candidates for the House of Representatives are required to provide their correct residential address. This requirement applies even where the candidate has failed to comply with the legislative obligation to update their address on the electoral roll, in accordance with the Commonwealth Electoral Act 1918. Providing a false or misleading statement to a Commonwealth entity is an offence under the Criminal Code Act 1995. In less than a week, Mr Charlton claimed to live at three different addresses. On Saturday *The Daily Telegraph* revealed that Mr Charlton was enrolled not at his house in Parramatta, not at his house in Bellevue Hill but at a Woollahra house owned by his wife. Mr Charlton said his failure to update his enrolment was an oversight and that he had updated his address to North Parramatta. But, on Monday, the *Parramatta Advertiser* said he is not using his home in North Parramatta as a house, but a campaign office. On Tuesday Mr Charlton told 2GB that he is living at his house in Bellevue Hill.

I understand from people who attended the declaration of nominations for the Division of Parramatta that the suburb of Mr Charlton's residential address was announced as Woollahra—the address he was reported to be incorrectly enrolled at. Mr Charlton admitted on Sky News this morning that he does not live there and has not

lived there since before nominations closed. Mr Charlton said, "I lived at the Woollahra property until 2021." Asked if it was rented, Mr Charlton said, "Yes, it is. Yes, currently rented." It appears Mr Charlton has provided the AEC with an address that he had not lived at for months. It appears this is a straightforward breach of the Criminal Code, where he has provided a false or misleading statement to the AEC as part of his nomination to be a member of the Australian Parliament. It is essential that the AEC takes all steps necessary to urgently investigate and resolve this matter, and it is essential that the Labor candidate for Parramatta clarify this matter urgently. The people of Parramatta deserve better.

### **SUPER HOME BUYER SCHEME**

**The Hon. ROSE JACKSON (14:19):** I speak for three minutes on why Scott Morrison's plan to let Australians use their superannuation to buy a house is such a very bad, very terrible, not good idea. The idea is not only not good, it is also not new. When floated in 2016, then Prime Minister Malcolm Turnbull described it as a thoroughly bad idea. It has been previously denounced as bad policy by a litany of Government MPs, people who now allegedly support the scheme in a desperate last shot-in-the-locker attempt to win the upcoming Federal election. Do not fall for it. The proposed scheme takes advantage of the temptation to access money now rather than make contingencies for later. It is a political version of "a bird in the hand is worth two in the bush", except in this case the bird in the hand is an emaciated, screeching Indian myna and the two in the bush are healthy, productive, compound interest-producing golden geese.

My first question is: Who is this scheme actually helping? It is certainly not helping middle- to low-income earners. Superannuation is proportionate to income. For a lot of low- to middle-income Australians, 40 per cent of their accumulated super will not actually contribute very much towards a deposit in Australia's current out-of-control housing market. The most likely beneficiaries are high-income earners who are already in a much better position within the housing market. The scheme will make things a little bit easier for them now but will even wreak havoc with their long-term retirement incomes.

The scheme is not just helping the wrong people, it will make the entire situation worse for everyone because, as economist after economist has pointed out, it will drive up house prices. In the short term, the scheme will increase demand in the housing market without doing anything about the supply bottleneck, with the expectation that the cost of a home in Sydney will escalate by up to \$134,000. In the long term, the scheme will leave thousands of Australians with higher mortgages and mounting debts and no reliable retirement income to service them. The policy will see funds diverted away from long-term investments made by the superannuation industry on behalf of all of our retirement incomes, benefiting the whole economy, into the already overheated property market.

Call the idea what it is: a last-ditch, desperate political effort to win an election by appealing to the very legitimate fears and frustrations of people who are being screwed by the broken housing market. Labor has committed \$10 billion to solve the problem. Scott Morrison's policy knowingly neglects the bigger picture of why Australians cannot afford to buy their own homes in the first place and offers young Australians the chance to take their own hard-earned retirement savings and transfer them into the retirement savings of older Australians.

### **CATTLE AND WATER BUFFALO LUMPY SKIN DISEASE**

**The Hon. SCOTT BARRETT (14:22):** Lumpy skin disease is a highly infectious viral disease that can affect all breeds of cattle and water buffalo. It is spread predominantly through biting insects such as mosquitoes and flies and also through direct contact between animals through secretions and excretions. Thankfully it is not something I have had any personal experience with because up until this point Australia has remained free of the disease. However, since the detection of lumpy skin disease in Indonesia earlier this month, the threat to Australia has increased significantly. Up until now we have had a bit of a geographical buffer, but that is now lost, with the most likely pathway of entry being into northern Australia from vectors either carrying the pathogen flying, being blown in or illegally visiting from Australia's nearest northern neighbours.

The threat is real and scary and on our doorstep. An incursion of lumpy skin disease would cost the New South Wales cattle industry \$6 million a day. Our cattle trade will stop immediately with effects across the supply chain. First we need to focus our attention on prevention and then prepare for eradication, should it come to that. That is something that will require a national response. Australia's Chief Veterinary Officer has already visited Indonesia to see what assistance we can lend. We have increased surveillance in our north and there are awareness campaigns for veterinarians, the industry and the public. Preparedness exercises have been scheduled over the coming weeks.

In New South Wales an incident action plan has been formulated and a significant communications campaign has begun, targeting in particular private vets, local land services and industry. Surveillance has increased and the NSW Department of Primary Industries is working on a PCR test similar to the COVID-19 test.

All of that has happened under the guidance of a State working group, with representatives from government and industry, convened by the Minister for Agriculture, Dugald Saunders, who is giving this matter the utmost importance.

The other key body of work is discussions with industry representatives in Canada on the development of an mRNA vaccine. That will be a world-leading approach by the New South Wales Government. The threat from this disease is real and its impacts would be huge. We have a very competent and dedicated team working on this issue, the biosecurity team within the Department of Primary Industries and Local Land Services. I thank them for what they have done so far. I ask the people of New South Wales to be hypervigilant with biosecurity, especially when it comes to lumpy skin disease. If the disease does come to our shores, we will need swift and decisive action and everyone will need to play a role.

#### DEATH OF SHIREEN ABU AKLEH

**The Hon. ANTHONY D'ADAM (14:25):** On 11 May Israeli soldiers shot and killed prominent Al Jazeera journalist Shireen Abu Akleh while she was covering an Israel Defense Forces [IDF] raid in the West Bank town of Jenin. Witnesses and verified videos taken at the scene have confirmed that at the time of her murder Abu Akleh was wearing a press vest and helmet. She was with other colleagues in the press and there were no armed Palestinian fighters in her vicinity. Despite clearly being a member of the press, an Israeli soldier shot Abu Akleh in the face. She was pronounced dead at St Joseph's Hospital in Jerusalem shortly after the attack. The world has been shocked by the video footage of Abu Akleh's body leaving the hospital which showed Israeli police attacking the funeral procession and clubbing the defenceless pallbearers to the point where they almost dropped Abu Akleh's coffin. Israeli forces seized Palestinian flags from mourners and later smashed the window of the hearse carrying Abu Akleh's body.

United Nations Secretary-General Antonio Guterres, the European Union and other multinational governmental organisations have expressed their grave concerns about the extrajudicial murder of Abu Akleh and subsequent violence against innocent people mourning her death. According to the United Nations Office for the Coordination of Humanitarian Affairs and Amnesty International's records, Abu Akleh is one of 79 Palestinians, including 14 children, that Israeli forces have killed between 21 June 2021 and 11 May 2022. Those are shocking events and have attracted widespread condemnation by journalists. The statements of three media unions bear repeating. The Palestinian Journalists Syndicate said that in light of the circumstances it is clear that the attack against Abu Akleh was "deliberate and planned to assassinate her". The general secretary of the International Federation of Journalists [IFJ], Anthony Bellanger, said:

Yet again journalists, wearing press vests, clearly identified were targeted by Israeli snipers. They were not alongside demonstrators, they were not a threat - they have been targeted to prevent them bearing witness and telling the truth about the Israeli action in Jenin.

The Australian union for journalists, the Media Entertainment and Arts Alliance, published several statements condemning the attacks. Various rank-and-file committees of the union, including those at the ABC, AAP, the National Freelance Committee, Nine publishing, and *The Conversation*, released statements consistent with the International Federation of Journalists' comments. I support calls by the IFJ and its affiliates to have the matter heard by the International Criminal Court. It is plainly inconsistent with international law and the principles of democratic government to assassinate journalists. Chilling footage of the recriminations against Abu Akleh's mourners confirms that Israeli police and defence forces feel no remorse or requirement to comply with their obligations under human rights legislation. Even Israel's most staunch supporters should condemn a government that kills journalists and beats unarmed mourners at a funeral.

#### *Documents*

#### DEPARTMENT OF PRIMARY INDUSTRIES

#### Reports

**The Hon. LOU AMATO:** I table a report of the Department of Primary Industries entitled *State of Biosecurity Report 2018-2021*, dated May 2022. I move:

That the report be printed.

**Motion agreed to.**



*Bills***GOVERNMENT TELECOMMUNICATIONS AMENDMENT BILL 2022****First Reading**

**Bill received, and read a first time and ordered to be printed on motion by the Hon. Shayne Mallard, on behalf of the Hon. Damien Tudehope.**

**The Hon. SHAYNE MALLARD:** I move:

That standing orders be suspended to allow the passing of the bill through all its remaining stages during the present or any one sitting of the House.

**Motion agreed to.**

**The Hon. SHAYNE MALLARD:** I move:

That the second reading stand as an order of the day for a later hour.

**Motion agreed to.**

**VOLUNTARY ASSISTED DYING BILL 2022****In Committee**

**Consideration resumed from an earlier hour.**

**The Hon. GREG DONNELLY (14:30):** Picking up where I left off, I was drawing my comments to a conclusion in regard to my first set of amendments, which are amendments Nos 1 to 3 on sheet c2022-076C. Some interest has been shown by some people in why there has been such a deliberative effort on my part to try to explain my concern about the decision-making process and the treatment of assumptions about the matter of presumption and matters to do with impairment, particularly in relation to people with mental health issues and their potential impact. I have spent some time on this particular part of the debate because it really is the start and everything flows from that. In my view, as I understand the legislation, that is the very commencement. I wish to cite two or three very quick comments that I think give some validation to my concern. The comments have been made by eminent people who are experienced in the law and clinicians.

A number of members have seen a joint opinion signed by David F. Jackson, QC, and Garry McGrath, SC, who are eminent legal practitioners in this State at the highest level. Mr Jackson, QC, has appeared—and probably still does appear—before the High Court of Australia on a number of occasions. The bill was presented to those gentlemen and they have commented on it. I will cite part of a paragraph of their opinion on the bill. Under the heading "Eligibility Criteria", paragraph 10 states: "Assessments of the state of mind of others can be notoriously difficult. Courts spend much time in resolving them. In reality the diagnosis that a person does, or does not, subjectively consider they cannot tolerably be relieved from pain et cetera, other than ending their life, is difficult to make with certainty and accuracy." That is part of a paragraph from a joint opinion expressed by eminent legal practitioners in this State.

I will cite another paragraph or part of a paragraph from Associate Professor Megan Best, who provided evidence to the inquiry, as the Chair of this Committee, the Hon. Wes Fang, would understand because he chaired that inquiry and did so most admirably in dealing with a challenging issue. I think all members appreciate the way in which he did so. In Associate Professor Best's submission No. 78 to the inquiry, when dealing with decision-making capacity being assumed, she stated on page 5:

An accurate decision-making capacity assessment would obviously be vital in assessing someone for VAD. However, in this Bill, the onus on the doctor is to prove a patient doesn't have decision-making capacity.

I touched on that matter earlier. She continued:

Given that we are dealing with a population—

these are the people who are likely to be contemplating the prospect of voluntary assisted dying—

who have advanced disease—

I do not think there is much contest about accepting that proposition—

this is a questionable assumption at the outset.

I remind the Committee that these comments were made by an associate professor in palliative care. The submission goes on to state:

Cognitive function is known to be impacted negatively by factors such as organ failure, medical treatments, and psychological morbidity. Research shows that 35% of people with physical and mental illness may lack capacity to make decisions about their health. This is a complex diagnostic area, and a high level of skill and experience is required to make this assessment.

This is an associate professor in palliative care medicine. A medical doctor and palliative care specialist is saying this in her submission. I cite one of the documents before the inquiry: "The assessment of decision-making capacity is far from a trivial exercise as indicated by the following points: (1) accurately assessing a person's decision-making capacity is critical to assessing whether they are choosing assisted suicide or euthanasia in a fully rational manner". I think that opinion could be taken as accepted. The document also states: "According to Dr Chris Nickson", who is an intensivist and an extracorporeal membrane oxygenation [ECMO] specialist at The Alfred hospital's intensive care unit [ICU] in Melbourne, "the more serious the decision to be made, the greater the care needed to ensure that capacity can be assumed."

In the context of mild cognitive impairment [MCI] a study has found that 77 per cent of hospital patients over the age of 60 were detected to be cognitively impaired using one of two cognitive screening tests, whereas staff physicians only detected 57 per cent of this impaired cohort and staff nurses detected 83 per cent of the impaired cohort. That is a 17 per cent variation. The study highlights that assuming decision-making capacity based on standard interactions between healthcare professionals and their patients is problematic and prone to error. The reference is cited in the submission, which goes on to state that "These findings indicate that the approach proposed in the bill to decision-making capacity assessment is completely inadequate to reliably detect people who are experiencing varying degrees of cognitive impairment." It goes on to say that a more robust method of assessing decision-making capacity and presumption is required.

I could cite many more opinions, but this will be the last one. I am sure it arrived in every member's inbox. It is from someone who is well known in New South Wales and certainly well known to the Legislative Council because his reflections and comments have been noted in the past. It is Clinical Professor Richard Chye, who is a director of the Sacred Heart Supportive and Palliative Care at St Vincent's Hospital and Adjunct Associate Professor of Medicine at the University of New South Wales, and he is a clinical professor of medicine at the University of Notre Dame and the University of Technology Sydney. He is highly qualified. His letter is not long. All members have received it, I am sure. I did. I guess it got cc'd to others or passed around. I invite members to read it. At the bottom of the first page, clinical Professor Richard Chye says:

I am afraid the bill does not protect the vulnerably ill and elderly who are unable to make decisions for themselves and are reliant on family and others for basic needs.

I will not read the whole paragraph; I am trying to shorten it. It goes on:

I am also worried for the vulnerable who are not able to make decisions because of their own mental capacity, which is not carefully excluded other than a conversation. And while many will say that this is not part of the current legislation, I fear that it will open many doors in the near future ...

The issue of decision-making and presumption of capacity is so central to this bill. That is why I highlighted it; I think it is so important and there are very major questions about it. I will leave my comments there in regard to those first three amendments. I commend the amendments to the House.

**The Hon. DAMIEN TUDEHOPE (Minister for Finance, and Minister for Employee Relations) (14:40):** I support the amendments moved by the Hon. Greg Donnelly. I commence by saying there has been a lot of commentary relating to these amendments. In fact, in some quarters they have been described as hostile. I reject that proposition and say that that commentary is regrettable and diminishes the role of this House in dealing with the legislation—in my respectful submission, very sensitive legislation—before the House. I would hope that members would not have formed a view in relation to amendments that they not consider them but just vote in a particular manner because they have been persuaded of the intrinsic integrity of the bill.

All members who have moved amendments to the bill have done so in good faith and they should be treated as having done so in good faith. They should not be subject to derogatory commentary in circumstances where their integrity has been impugned and the amendments are seen in some way to be frivolous. I would not be on my feet speaking on a frivolous amendment. In conscience, I hold that I should raise and say what should be said about the amendments. That level of respect should be shown to those who move amendments to the bill, which in good faith they say would improve the outcomes of the bill. I have not engaged in any external commentary necessarily in relation to the bill. My views potentially are well known. However, I have respected the position of those who want a free conscience vote on the bill; I think we all should, and I think that in some of the commentary that respect should have been adopted in a similar manner.

Turning to these amendments, I endorse a lot of what the Hon. Greg Donnelly has had to say. These amendments are fundamental to where we end up in relation to a decision. We cannot get to this legislation unless someone actually wants to achieve it. The problem, as the member quite correctly identifies, is that the outcome of that decision is that someone is dead. In those circumstances, as a Parliament that passes a law that has an

outcome that someone dies, albeit voluntarily, as is the intent of the bill—and I do not quibble with the motives of those who brought forward the bill—we ought to be very careful to make sure that the bill as drafted delivers an outcome that not one person dies in circumstances where either they did not have the proper capacity to make the decision, which is the foundation point of the bill, or alternatively they died in circumstances where they had withdrawn their consent or did not want their decision to be acted on.

If we could make an amendment to this legislation that gave some comfort to that decision-making process, I ask members to consider that very carefully. I urge members to act not necessarily on the basis of what someone has told them but in accordance with the foundational force of the argument that they want to be part of a legislative process that delivers an outcome better than currently drafted. That is the fundamental starting place. We as a legislature would not want to see a circumstance where someone who dies did not have the capacity to make that decision and died as a result of the process or alternatively did not want to die. That is the level or the weight imposed on the Parliament by the passing of this legislation. That is the starting point. The provision relating to the decision-making capacity is drafted in the bill as follows. I seek the indulgence of members to read the clause, notwithstanding that the Hon. Greg Donnelly did not read it. I think it is important for members to properly consider the clause, which states:

**6 Decision-making capacity**

- (1) For the purposes of this Act, a patient has decision-making capacity in relation to voluntary assisted dying if the patient has the capacity to—

It goes on, and there are five tests:

- (a) understand information or advice about a voluntary assisted dying decision required under this Act to be provided to the patient, and

I will not go through all the provisos. Subparagraph (f) is potentially an important component of the decision-making capacity:

- (f) communicate a voluntary assisted dying decision in some way.

Subclause (2) of clause 6 to the bill reads:

- (2) For the purposes of this Act, a patient is—
- (a) presumed to have the capacity to understand information or advice about voluntary assisted dying if it reasonably appears the patient is able to understand an explanation of the consequences of making the decision, and
- (b) presumed to have decision-making capacity in relation to voluntary assisted dying unless the patient is shown not to have the capacity.

The definitions section applies to subclause (3):

- (3) In this section—
- voluntary assisted dying decision** means—

I practised as a lawyer for many years, and I remember dealing with one particularly difficult case, *Szozda v Szozda*, which involved decision-making capacity in relation to a will. Generally, lawyers treat these cases starting with the premise that people have the capacity to make the decisions they have made, that is, in respect of the transaction of a will, which is a reasonably final testamentary document that someone wishes to make. In circumstances where that is challenged, the starting point is to presume that the person has the capacity to make that decision. But the nature of cases relating to testamentary capacity are so varied and multiplied and the facts and circumstances relied upon to either displace the presumption or to prove that a person did not have capacity are so complex and multifarious that it is difficult to codify where you would in fact fall in respect of an individual case.

Because of the seriousness and the outcome of the decision, we ought not start from the presumption that the person has capacity. We should start by saying to the person who is giving the certificate, "We want you to identify the facts and circumstances that convince you that this person had the capacity." For example, I note lawyers are cross-examined when they are giving evidence about forming a view on whether someone had capacity when entering into a contract or will at potentially a late stage of life—in the *Szozda* case, I recall the lady making the will was 95—to understand the complexity of all the information in front of them at the time. A presumption that they did in fact understand all the information in the Act as drafted provides a significant amount of information that must be provided to the person making the decision.

The complexity of them making a decision—with the presumption that they understood all that information just because they have been given it—is such that I submit it is a circumstance that, because of the finality of this decision, we should not rely on. We should in fact ask the person making the decision to outline the facts and circumstances that led them to believe that the patient knew the import taking poison. Taking poison means—all

members might have a view—that you die. However, there might be a whole series of other questions we may also want to ask the patient who is making that decision, such as, "Do you know that there is something else available? Do you know about people who recover from this condition? Do you know that there are alternative treatments? Have they been explained to you?"

That whole range of facts and circumstances, which a person should have in front of them when making the decision potentially to die, should not be the basis of a presumption and should never be expressed in that way in a bill. It is hard to put it on a higher level than that. As drafted, we should in fact remove the two presumption sections and reverse the onus onto the people who are signing the certificate to demonstrate that they have been satisfied that the person has made that decision on the basis of all the information available.

In the Szozda case I mentioned, the woman had very complex affairs. She was a director and shareholder in a number of companies, and a trustee of a trust. It was a significantly large estate. You might ask her, "Do you know it is Friday?" She might say, "Yes". The next question might be, "Do you know who the last Prime Minister of Australia was?" She might have an answer to that. But if you then ask, "Do you know what assets XYZ Pty Ltd holds and how they are currently distributed?"—because you are making a will distributing all those assets to various beneficiaries—and the answer is, "No, I don't", you have probably arrived at a situation where that person no longer has capacity to make that decision.

I ask members to apply that example to the following situation. "I know it's Friday. I know who the last Prime Minister was. But I don't know that palliative care is available down the road and it hasn't properly been explained to me, and the doctor who is signing the certificate hasn't given me an opportunity to potentially consult someone else in relation to this decision". An alternative answer might be, "I recently spoke to my son or daughter, who was encouraging me to make this decision." If that level of decision-making has not been explored, to rely on a presumption where someone dies appears to me to abrogate the responsibility to draft legislation where members could be properly satisfied that someone would not die either against their will or, alternatively, in circumstances where they may have made a different decision if proper information and proper decision-making had been available. One of the proposals in the amendments is to include a provision to include a circumstance where a person would not have capacity. For the purposes of making sure that their position is clear, it provides:

- (1A) Without limiting subsection (1)(e), a patient does not have the capacity to weigh up the factors referred to in paragraphs (a), (c) and (d) for the purposes of making a voluntary assisted dying decision if the person's capacity to weigh up the factors is significantly impacted by a mental health impairment within the meaning of the *Mental Health and Cognitive Impairment Forensic Provisions Act 2020*.

I would have thought that, as part of a responsible legislature, this was a self-evident provision. Perhaps someone does not have capacity to make a decision within the purport of the bill when potentially they fall within the provisions of the Mental Health and Cognitive Impairment Forensic Provisions Act 2020. Even if members reject any of what I just said, I encourage them to tell me why they would not agree to that amendment. Why would they not agree that a person who would not have capacity under that Act would be presumed not to have capacity? That is potentially where the emphasis should be for the purposes of making sure that this is a clearer process under the bill.

A lot of the other material that I was going to articulate in relation to the bill is fundamental to making a reasonable assessment of the patient in front of you. As drafted, the patient has to reasonably appear to understand the substance that will cause their death. There is no need to be attentive to the much broader questions. That is the point I was making earlier. In a will, a person would have to understand the totality of their financial situation for the purposes of making the will. The totality of a person's personal situation for the purposes of making a decision that they want to die should in fact be explored by those providing them a certificate that enables them to either self-administer or be assisted in the administration of a poison that will kill them. Surely we would want to explore whether the patient understands their diagnosis and prognosis, and the treatment and palliative care options available. All those things should be explored as part of a presumption, not just as part of the "reasonably appears" provision.

I leave my comments there. Like the Hon. Greg Donnelly, I form the view that that is a fundamental starting point for any discussion relating to the bill. I reiterate my point that every one of the amendments that are to be moved in this debate are not frivolous. Every one of them has been thought through by the movers of those amendments. Respect should be shown to those members who have proposed amendments. They should not be called hostile. Their amendments are proposed in good faith and in circumstances where those members are seeking to improve the bill.

**The Hon. ADAM SEARLE (14:59):** As the bill stands in my name, I speak to the three amendments moved by the Hon. Greg Donnelly. I thank him for his contributions and moving the amendments in globo. I also thank the Hon. Damien Tudehope for his contribution. I say at the outset that I personally do not impugn the motives of anyone who has lodged amendments. I take all amendments very seriously, as do the other sponsors

of the bill. I assure the House that close consideration has been given to them. In return, I ask that members who do not support the bill accept that sponsors and supporters of the bill are also acting in good faith in this place. In relation to the general approach to be taken by me at least, my view is that the sponsors of the bill have weighed up whether we feel that the amendments improve the bill, as the Hon. Damien Tudehope has mentioned, or whether they do not. That is our responsibility and that is what we have applied ourselves to.

In relation to the three amendments, I indicate clearly for the benefit of honourable members of the House that the co-sponsors of the bill recommend that members oppose the amendments. I will outline my reasoning. The first amendment would change the definition of "decision-making capacity" with regard to how a patient is able to communicate their decisions. In our view, that is a risky amendment that could create a situation where someone who has the capacity to make a voluntary assisted dying decision is deemed to not have capacity based solely on their inability to communicate or their restrictions on communication and a view that it is not being communicated in a clear way. That proposal is inconsistent with the approach taken in other jurisdictions and normal medical understanding and interpretation of decision-making capacity. For example, a person with motor neurone disease or locked-in syndrome could easily be described as being unable to speak or communicate clearly. The amendment in that case could potentially exclude those persons from accessing the scheme provided for in the legislation.

There are many conditions where people could be considered unable to communicate clearly, particularly amongst those people who have a terminal illness or condition. Honourable members should reflect that the bill already requires that the first request, the final request, the administration decision and any revocation of an administration decision have to be clear and unambiguous. That terminology is already used in other parts of the bill. I refer honourable members to clause 19 (2) (a) and clause 48 (2) (a), among others. Assessing doctors are required to, based on their clinical judgment, be satisfied that requests are voluntary and enduring. I refer honourable members to clause 16 (1) (e) of the bill. It is important that patients have the ability to communicate in some way and that their requests and decisions throughout the process are clear and unambiguous. Those safeguards are built into other parts of the process.

The second amendment would amend the bill's definition for decision-making capacity so that anyone with a serious mental health impairment would automatically be deemed as unable to satisfy the requirement of having the capacity to weigh up the factors in order to make a decision. It is unclear whether that would mean that a person with a mental illness would have to prove a higher level of capacity or prove their mental illness does not significantly affect their ability to weigh factors or whether they would simply be excluded altogether. Whichever way, I have reached the view that the outcome is inappropriate. Having a mental illness does not mean that you lack the decision-making capacity to make choices in your life or on your medical treatment or end-of-life options.

Conditions like depression or anxiety understandably occur in many people who are at the end stage of a terminal illness. Many people in the wider community have or have had a mental illness. If a person who has depression or anxiety cannot weigh up the factors for making a voluntary assisted dying decision, the bill requires their assessing doctors to assess them as not having decision-making capacity, like anyone else. We do not believe that there is a problem that needs addressing in that part of the bill. We do not believe the amendment adds anything other than judgment and discrimination of people with a mental health issue. That may not be the intention, but that is the effect.

The third amendment relates to the removal of the presumption of capacity. Honourable members should reflect that the removal of the presumption of capacity was strongly rejected in debate in the other place. It breaches long-established legal and ethical principles and, in our view, has dangerous and unknown implications. The presumption of capacity is a fundamental protection that underpins medical law in Australia and, indeed, the rest of the western world. People are presumed to have capacity to make decisions about their own medical treatment, and to take that away undermines the recognition of patient autonomy. Removing that presumption could provide legal uncertainty, making it unclear whether common law principles that recognise the presumption of capacity would apply. It could result in a person who is seeking voluntary assisted dying having to prove they have capacity, which offends the rule of law requiring that the law be applied to all people equally without discrimination between people on arbitrary or irrational grounds.

In my view, it would be arbitrary or irrational for a terminally ill person to be presumed to have capacity to decide to stop receiving life-sustaining treatment, such as surgery or chemotherapy or other medical treatment, but another terminally ill person be presumed to lack capacity to seek voluntary assisted dying. The starting point for all medical treatment at the moment is that a person has capacity unless there is some reason to doubt that. Honourable members should reflect that even though that is the starting point, in other parts of the bill, for example, in clause 16 (2), the medical practitioners involved in the process are required to interrogate them. The provisions around presumption of capacity should not be looked at in isolation. The bill requires decision-making capacity to be assessed through the process and as an eligibility criteria. Both doctors involved in that process

would be required to positively inquire into a patient's capacity to make a voluntary assisted dying decision. All other States include the presumption. Excluding it in the way proposed in this amendment risks sending a signal that decision-making capacity should be assessed differently in New South Wales. I will leave my comments there. The recommendation from the co-sponsors is to reject the three amendments.

**The Hon. SARAH MITCHELL (Minister for Education and Early Learning) (15:06):** I will make a brief contribution to the amendments moved by the Hon. Greg Donnelly. As the Leader of The Nationals and this being the first opportunity to speak in the Committee stage, I will put a couple of things on the record on behalf of my party. The Nationals have a conscience vote on the bill, but all members support it. That was evident in the second reading debate and in the vote. With indulgence, I put on record that the Hon. Scott Barrett and I missed the vote on the bill following the second reading debate. The Hon. Scott Barrett had COVID and I had a longstanding family commitment. We were unable to be here, but both of us are on record supporting the legislation.

The Nationals as individual members and collectively are largely supportive of the bill as it passed following the second read. I will move a couple of amendments and other members of The Nationals may wish to make contributions as the debate progresses, and individual members will vote on amendments as they see fit when there are divisions. As I said, The Nationals as individual members have collectively reached the same position to support the legislation. We would like to see it pass through the House. With those remarks, I make it clear that, generally speaking, members of our party will not be seeking to contribute much to the debate on the majority of these amendments at the Committee stage. As I foreshadowed, some members may wish to do that from time to time.

**The Hon. SCOTT FARLOW (15:09):** I support the amendments moved by the Hon. Greg Donnelly with respect to decision-making capacity. It was one of the areas that I had concerns about in the Law and Justice Committee inquiry that you, Chair, so capably chaired. Some of the evidence that we heard was in regard to decision-making capacity. I am particularly drawn to the Hon. Greg Donnelly's amendment No. 3, in terms of changing the presumption when it comes to decision-making capacity. The amendment will ensure there is not a blanket assumption of decision-making capacity as it is currently under the legislation before us. There has been discussion about the checks and balances in regard to the doctors who are inspecting the individuals before they are granted voluntary assisted dying. Many of the people who made submissions to the committee were concerned that it could be a tick-and-click process.

This amendment actually puts some teeth into the proposed legislation in this regard. It will improve the bill as it stands. I am an opponent of the bill, but I believe that we need to deal with the reality that is before us, which is that the Voluntary Assisted Dying Bill will pass this Parliament. That is not something that I will celebrate but it is reality. In passing the bill, I think that we need to have as many protections in place as possible. The amendment by the Hon. Greg Donnelly seeks to do that with respect to decision-making capacity. I note that when it comes to this part of the bill, supporters of the bill in the community who have lobbied me still do believe that there need to be protections and safeguards in place, that are not currently in the bill. They would like to see voluntary assisted dying come to fruition, from their perspective, but would like to see additional safeguards in place. One of the issues often raised with me is to ensure the decision-making capacity of the person who is seeking voluntary assisted dying and to ensure that they are enabled to make the decision freely of a sound mind. That is what the Hon. Greg Donnelly's amendments will achieve. It is why I am supporting those amendments today.

**Ms CATE FAEHRMANN (15:11):** On behalf of The Greens in this place, I will contribute to debate on these amendments. I echo the earlier contribution of the Hon. Sarah Mitchell by saying that all of The Greens MPs support the bill. I acknowledge that Ms Sue Higginson, who has just joined us, was not able to vote on the second reading last week because she was not a member of this place. She supports voluntary assisted dying. For The Greens it is not a conscience vote; it is party policy. We will support it every single time. I note that the bill before us has 28 co-sponsors and has passed through the Legislative Assembly resoundingly. The three amendments of the Hon. Greg Donnelly that we are debating right now have been defeated resoundingly in the Legislative Assembly. A number of amendments will be put and debated today and tonight—however long it takes—that have been resoundingly defeated in the Legislative Assembly. The Greens will be limiting our contributions to the debate and will not be speaking to every single amendment.

The Greens may choose not to contribute to debate on amendments that have been defeated in the Legislative Assembly. The issues have been canvassed and I support the reasons given by Alex Greenwich, MP, for why they were defeated. I note that the Hon. Adam Searle, who has carriage of the bill in this place, will put the views of the co-sponsors of the bill on every single amendment. I note that the three amendments before the Committee have been rejected in the Legislative Assembly. Amendment No. 1 changes the wording in the definition of "decision-making capacity" by removing the words "in some way" and inserting "clearly and

unambiguously". I note that the Hon. Adam Searle has said that the bill already requires that requests and decisions made to the coordinating practitioner and the consulting practitioner are "clear and unambiguous". For the coordinating practitioner this requirement is in part 3, division 2, section 19, "Person may make first request to medical practitioner". Subsection (2) states:

(2) The request must be—

(a) clear and unambiguous ...

I have concerns about this particular amendment. I have spoken to many people over the years I have advocated for dying with dignity and while the Rights of the Terminally Ill Bill 2013 was debated in this place. Those who are in the late stages of motor neurone disease or locked-in syndrome cannot communicate clearly and unambiguously. This amendment will not allow those people to make a request. It is really important that this amendment is therefore not supported. One of the reasons for this legislation in the first place is that people with, for example, motor neurone disease will want to live well for as long as they can. One of the consequences of this amendment would be that people will potentially be forced or pressured to choose to request assistance earlier, while they can still communicate clearly and unambiguously.

In relation to amendment No. 2 regarding mental health impairment, I note that on page 17 of the bill, part 3, section 38 allows for a referral of opinion if the consulting practitioner is unable to decide whether the patient has decision-making capacity in relation to voluntary assisted dying. It gives the example of "due to a past or current mental illness of the patient". That is already in the bill. Reading the parts of the bill concerning decision-making capacity—even as amended by the lower House—there are just so many safeguards. It is so robust. Decision-making capacity is outlined in the bill. It states:

**6 Decision-making capacity**

(1) For the purposes of this Act, a patient has decision-making capacity in relation to voluntary assisted dying if the patient has the capacity to—

(a) understand information or advice about a voluntary assisted dying decision required under this Act to be provided to the patient, and—

not "or", but "and"—

(b) remember the information or advice referred to in paragraph (a) to the extent necessary to make a voluntary assisted dying decision, and

(c) understand the matters involved in a voluntary assisted dying decision, and

(d) understand the effect of a voluntary assisted dying decision, and

(e) weigh up the factors referred to in paragraphs (a), (c) and (d) for the purposes of making a voluntary assisted dying decision ...

The boxes that the consulting practitioner and the coordinating practitioner have to tick and the forms that they have to fill out and—if there is any doubt—the referrals that they have to do makes the bill robust. Any amendment that comes before this Committee tonight to make it more difficult and exclude people who it is the very intention of this bill to assist, The Greens will not support. We do not support the amendments before the Committee.

**The Hon. GREG DONNELLY (15:18):** I do not intend to speak for a long time. I have some points of clarification in relation to the contribution by the Hon. Adam Searle. With respect to proposed amendment No. 1 on my sheet c2022-076C, I am seeking clarification. Just to be clear—and correct me if I am wrong—in effect, for the purposes of the debate this afternoon and tonight, the Hon. Adam Searle is reflecting the position of the supporters of the bill. Is that fair?

**The Hon. Adam Searle:** The co-sponsors.

**The Hon. GREG DONNELLY:** The co-sponsors. The honourable member is speaking from that position. I accept that that is the basis upon which the member is commenting. With that in mind, going back to my amendments, "in some way" is not defined in the definitions clause of the bill. I still do not understand what "in some way" means. I seek clarification from the honourable member to put on record the position of the sponsors of the bill quite specifically about what "in some way" means.

**The Hon. ADAM SEARLE (15:20):** On this occasion I will respond in the way that is sought by the honourable member, but I will not make a habit of it. This is not an interrogation; there is a process where we put our competing arguments to the House. "In some way" are ordinary, English words with their plain meaning. That is, the person seeking access to voluntary assisted dying has to in some way signify their intention. "In some way" are words of wide import; I accept that. They are not a term of art. The honourable member is right, the phrase is not defined in the bill. But it does require a person seeking access to the framework to indicate that that is their intention. Obviously there are a number of other steps in the legislation. The two medical practitioners must make

sure that the eligibility criteria are met. In that process they must interrogate people's capacity, although the presumption is that somebody has capacity. That is the starting point.

I reflect also on the contribution made by the Hon. Cate Faehrmann about all of the other processes and provisions in the bill where this step, this intention to access the voluntary assisted dying scheme provided for in the bill, is interrogated through the process. There has to be a first request, it has to be assessed, there has to be a decision, and there has to be a final request. At each stage—to use a colloquialism—the intention of the person seeking access is very closely interrogated, and that is plain when you read the other provisions of the bill.

**The CHAIR (The Hon. Wes Fang):** Before I give the call to the Hon. Greg Donnelly, I will make a couple of observations. As the Chair, I will do all that I can to facilitate debate and to ensure that every member has the opportunity to have their say on these very important amendments to this very important bill. I do not seek to make rulings or commentary throughout the debate. Certainly this is the first time I have spoken other than to call members to the lectern. I do not want to make a habit of this question-and-answer session. There are amendments before the Chamber. Members are entitled and have the right to speak to those amendments. I do not believe there is a spokesperson, as such, on the bill. The bill is as written, so this is not the time to put questions to a member. The contributions are to relate to the amendments. If clarifications are sought, they should be sought to be addressed through the amendments. When members seek to be heard, I will allow that and I will ensure they are heard in silence and with respect.

**The Hon. DAMIEN TUDEHOPE (Minister for Finance, and Minister for Employee Relations) (15:23):** In relation to the observations of the Chair, they do not reflect the process of this place. In respect of any bill, it is open to a member to ask the mover of the bill to clarify a particular phrase or component where there is a suggestion that there is no clarity in respect of a provision in the bill. It happens in debate on nearly every single bill. The mover of the bill is asked to state, generally in reply, the Government or the Opposition position, as the case may be. It is certainly open to a member seeking clarification to make that request of the mover of the bill.

**The CHAIR (The Hon. Wes Fang):** I thank the Minister for that clarification. I will elucidate on my observations. The Hon. Greg Donnelly, part way through a contribution—I do not believe he had finished—sought clarification. That is generally not how the Committee stage works. I ask members to make a contribution and at the end of their contribution, having sought elucidation, a member may address those concerns in totality. I am trying to facilitate debate in an orderly fashion. Members have done very well so far. I will continue to facilitate the debate. The Hon. Greg Donnelly has the call.

**The Hon. GREG DONNELLY (15:25):** As a point of clarification, so that I am clear about the guidance that has been provided by the Chair—and I do appreciate the guidance—last night I deliberately sought on a private and confidential basis to have a brief discussion with the Hon. Adam Searle. I do not intend to go into the nature of all of the matters that I discussed with the Hon. Adam Searle, but one matter that I sought clarification on related to, I will use the term, the carriage of the bill in the House, which he in fact is doing. He introduced the bill and has carriage of the bill in this House. This is a private members' bill. In fact, it is a private members' bill with a number of co-sponsors, so it is unusual in that respect. It is not a bill of a single private member.

The challenge for those who wish to debate the bill, particularly with respect to amendments, is that there is not a Minister at the table whom we can seek clarification from about a matter. There is no such person present in the context of debate on the private members' bill. If the Chair is indicating to me that it is not appropriate for me to seek clarification from the Hon. Adam Searle on the content of the bill—a most significant bill that will provide for individuals being given assistance to suicide or be euthanised in this State—I ask the Chair's guidance on who I seek clarification from.

**The CHAIR (The Hon. Wes Fang):** We will continue with the debate. Three amendments are before the Chamber. I will hear from other speakers who wish to speak to those amendments.

**The Hon. GREG DONNELLY:** I apologise, Mr Chair. In seeking clarification, I understand the protocol and etiquette of directing all comments through the Chair. I was not seeking to digress and direct the questions to the Hon. Adam Searle. I apologise if it was understood that way. It was in the context of debating and talking about the amendment that it was posed as a question. I will pose my questions—and I have many questions—through the Chair to the Hon. Adam Searle. He confirmed with me last night that he has carriage of this legislation in this House and that he represents the co-sponsors of the bill in this House, which is why I was seeking clarification from him.

Going back to the comments on "in some way", I thank the member for the clarification. I do not think it added anything particularly to the phrase's vanilla nature, ambiguity and lack of clarity. But, in any event, we move on. The terminology "clear and unambiguous", which Ms Cate Faehrmann correctly referred to, is found elsewhere in the legislation in terms of this iterative process—moving towards death by assisted suicide or



euthanasia. I still do not understand and I seek clarification as to why that same terminology is not appropriately located at the commencement of the legislation, where, of course, everyone who is considering assisted suicide or euthanasia is going to start. In other words, that is where people are going to start to look for clarification about what things mean, particularly with respect to doctors, who obviously are going to be involved in this. The fact that it is not there, out front, very clear, I do not understand, and perhaps some clarification could be made in that regard.

The Hon. Adam Searle made a curious statement, which I also seek clarification on. He was distinguishing, as I understand, the decision-making of a person with respect to general medical treatment or medical attention—for example, surgery or perhaps some other invasive procedure or perhaps even less invasive. With respect to the matter of presumption, we understand that. He then referred to voluntary assisted dying as being in the same category, and he used the phrase "medical treatment". Will the honourable member confirm to the Committee that it is the position of the sponsors of the bill that voluntary assisted dying is to be considered medical treatment in New South Wales if the legislation is to pass this Parliament?

**The Hon. ADAM SEARLE (15:31):** In response to the Hon. Greg Donnelly's invitation, I was making the point that a person can now make a decision to not have life-sustaining treatment and there is no interrogation of a person's capacity in that situation. That was the context I referred to as medical treatment. I was drawing the parallel that if a person with a terminal illness within the framework provided by the legislation sought to access voluntary assisted dying, under the amendments proposed by the Hon. Greg Donnelly their capacity is put under a question mark—that is, the onus is reversed. I was simply drawing the attention of the Committee to that very differential treatment between the two scenarios. The position in the bill is that there should be a presumption in favour of a person's capacity unless or until the circumstances call that into question. I note that in the eligibility criteria a person's capacity is interrogated, and in the process of making the first and final request those matters are closely scrutinised. I hope that assists the Hon. Greg Donnelly and other members of the Committee.

**The Hon. GREG DONNELLY (15:32):** I have one final clarification. The honourable member indicated that in the eligibility part of the bill—

**The CHAIR (The Hon. Wes Fang):** Before the Hon. Greg Donnelly continues, I will further refine what I am seeking to do. I do not want members addressing each other in seeking points of clarification. Seeking points of clarification is reasonable and appropriate when it occurs in the House. However, I do not believe it is appropriate for two members to address each other during the Committee of the Whole. The Hon. Greg Donnelly may seek clarification on a part of another member's contribution. He would seek that through the Chair and then another member would seek to address that point of clarification through the Chair. If the Committee adopts that respect of the Chair and of other Committee members, we will get through the process in a much more orderly fashion and hopefully have a seamless flow for the next few hours. The Hon. Greg Donnelly has the call.

**The Hon. GREG DONNELLY:** I appreciate the guidance, Mr Chair. I conclude my remarks on my first tranche of amendments. I encourage honourable members to support them.

**The CHAIR (The Hon. Wes Fang):** The Hon. Greg Donnelly has moved amendments Nos 1 to 3 on sheet c2022-076C. The question is that the amendments be agreed to.

**The Committee divided.**

Ayes .....14

Noes .....23

Majority.....9

#### AYES

Amato  
Banasiak  
Borsak  
Donnelly  
Farlow (teller)

Houssos (teller)  
Martin  
Mason-Cox  
Moriarty  
Moselmane

Nile  
Poulos  
Rath  
Tudehope

#### NOES

Barrett  
Boyd  
Buttigieg (teller)  
Cusack  
D'Adam (teller)

Franklin  
Graham  
Higginson  
Hurst  
Jackson

Primrose  
Roberts  
Searle  
Sharpe  
Taylor

## NOES

Faehrmann  
Farraway  
Field

Mallard  
Mitchell  
Pearson

Veitch  
Ward

**Amendments negatived.**

**The Hon. GREG DONNELLY (15:46):** By leave: I move amendments Nos 4 to 7 on sheet c2022-076C in globo:

**No. 4 Health care worker not to initiate discussion about voluntary assisted dying**

Page 4, clause 10(1), line 13. Omit ", while providing the services to the person".

**No. 5 Health care worker not to initiate discussion about voluntary assisted dying**

Page 4, clause 10(2), lines 20–29. Omit all words on those lines.

**No. 6 Health care worker not to initiate discussion about voluntary assisted dying**

Page 4, clause 10(3), lines 30–36. Omit all words on those lines.

**No. 7 Health care worker not to initiate discussion about voluntary assisted dying**

Page 4, clause 10(4), line 37. Omit "health care worker". Insert instead "medical practitioner".

I thank honourable members for their consideration of my three previous amendments. Clause 10 of the bill is headed, "Health care worker not to initiate discussion about voluntary assisted dying". That is a very clear heading, but as people say about things, particularly legislation, the devil is in the detail. I will not cite all of clause 10 because it goes from line 11 to line 42 and it has five subparagraphs on page 4 of the bill. I have to say that the heading is highly attractive to me. I was jumping out of my skin, which is rather interesting for a person who does not support the legislation, to see the bill having a heading like this—"Health care worker not to initiate discussion about voluntary assisted dying". That is an excellent idea.

Vulnerable people should be protected from having the notion of intentionally ending their life—which is what we are talking about here and we discussed the notion of intention during a previous debate—or having their life ended because of the idea being proposed to them and placed in their minds. I assume that most members would agree—I do not think there probably is disagreement about this—that the human spirit is very strong. The human spirit is such that we do not submit. None of us do. None of us will, I believe, because it is not the way we are as human beings to submit to the idea of dying and wanting to die. That is not what human beings want. But, of course, there are people—and thus the bill before the Parliament arising from the agitation around this issue—who do reach a point whereby there is the argument we deal with these days that they should be able to exercise their autonomy, their choice and be able to end their lives on the terms that they wish at their timing.

But the issue is this question of "voluntary". I keep coming back to this—the Voluntary Assisted Dying Bill 2021. It is all voluntary. Clause 10, though, completely cuts down and decimates the whole notion of the heading, "Health care worker not to initiate discussion about voluntary assisted dying". It undermines the protection that is held in the title of this clause by creating a series of exceptions which would, in my submission, leave vulnerable people exposed to suggestions of possible courses of action that they never otherwise may have considered.

I think it is utterly presumptuous of the proponents of this proposed law—and, indeed, similar pieces of legislation not just in this country but around the world—posing a situation of, in effect, setting people up for one almighty fall. That is the potential, I would submit. It is the actual planting in their mind of a suggestion that they can bring forward the point in time of leaving their mortal coil. It is utterly presumptuous of the supporters of this legislation, the Hon. Adam Searle leading in this House, to, in fact, be making the presumption and supporting a bill with the presumption in it that there ought be locked in, in black letter law, these exceptions that completely destroy the integrity of healthcare workers not to initiate discussions about voluntary assisted dying.

Going to my amendments now, amendment No. 4 would amend clause 10 (1) to remove the exemption for all healthcare workers to be capable of actively suggesting euthanasia or assisted suicide to their patients or clients. I will come back to the definitions shortly; I might just go through the four of them. Amendment No. 5 would delete clause 10 (2), with the effect of preventing a medical practitioner from suggesting euthanasia or assisted suicide to a patient who has not requested the information about it. Amendment No. 6 would delete clause 10 (3), with the effect of preventing—deliberately so by this amendment—a healthcare worker other than a medical practitioner from suggesting euthanasia or assisted suicide to a patient. Then amendment No. 7 would amend clause 10 (4) by limiting the provision of information on voluntary assisted dying to a medical practitioner. As I said—and I was not being cheeky about it earlier—with matters like this, the devil is in the detail. I draw

members' specific attention to, once again, the dictionary at the back of the bill. Quite specifically, I draw members' attention to page 82 of the bill. Towards the bottom, at line 39, it reads:

**registered health practitioner** means a person registered under the Health Practitioner Regulation National Law to practise a health profession, other than as a student.

With respect to that law, that is essentially mirrored in—I did not read it from cover to cover—what I believe is actually a mirror Act in the State of New South Wales. I stand to be corrected. So that law, a national law, is reflected in New South Wales in identical terms. If one goes to that legislation and specifically goes to the definitions clause in that legislation—for the record, that is clause 5—I draw the Committee's attention to the definition, first of all, at the top of the page on what is the copy I have saying:

**"health practitioner"** means an individual who practises a health profession.

Then immediately under it has the definition of what a health profession is. It says:

**"health profession"** means the following professions, and includes a recognised specialty in any of the following professions—

I will be very quick about this, but I will run down the list because it is quite prescient to the point I am making:

- (a) Aboriginal and Torres Strait Islander health practice;
- (b) Chinese medicine;
- (c) chiropractic;
- (d) dental (including the profession of a dentist, dental therapist, dental hygienist, dental prosthetist and oral health therapist);
- (e) medical;
- (f) medical radiation practice;
- (g) midwifery;
- (ga) nursing;
- (h) occupational therapy;
- (i) optometry;
- (j) osteopathy;
- (ja) paramedicine;
- (k) pharmacy;
- (l) physiotherapy;
- (m) podiatry;
- (n) psychology.

There is the definition there, which is referenced with respect to the definitions clause. I take honourable members to the bill itself and to the bottom of page 4, whereby we have in subclause (5) what a health care worker is. It says:

**health care worker** means—

- (a) a registered health practitioner ...

We know what they are because they are defined from what I just described and, as I said, it means an individual who practises in a health profession, and that has just been described. But it goes on to say "or", and this is particularly important:

- (b) another person who provides health services or professional care services.

I take honourable members once again back to the dictionary, because it is really important. If one goes to page 82 commencing at line 16 and going down to line 26, one has the definition of a "professional care services" and what that means. I will read it:

**professional care services** means any of the following provided to another person under a contract of employment or a contract for services—

- (a) assistance or support, including the following—
  - (i) assistance with bathing, showering, personal hygiene, toileting, dressing, undressing or meals,
  - (ii) assistance for persons with mobility problems,
  - (iii) assistance for persons who are mobile but require some form of assistance or supervision,
  - (iv) assistance or supervision in administering medicine,

- (v) the provision of substantial emotional support,

Then (b) says:

- (b) providing support or services to persons with a disability.

We then go back to the bill and see what this all means in clause 10. Clause 10 (2) flows into 10 (3), which says, "Also, subsection (1) ...". New subsection (1) reads:

- (1) A health care worker who provides health services or professional care services to a person must not, while providing the services to the person—
  - (a) initiate a discussion with the person that is in substance about voluntary assisted dying, or
  - (b) in substance, suggest voluntary assisted dying to the person.

Clause 10 (3) provides, as I have described, "Also, subsection (1) does not apply to a health care worker, other than a medical practitioner ..." I will not read the rest of it. I find it extraordinary and profoundly saddening that this Parliament is considering supporting a piece of legislation that will provide for a person to potentially end their life by assisted suicide or euthanasia but which excludes conversations that could take place in the intimate circumstances of bathing. Perhaps we have all bathed a parent who is dying. I have, for my mother. I am sure most members have. We have probably all bathed fathers who were dying or have gotten the dribble off their face and all the rest of it. All of these things we do for our loved ones. I am sure all honourable members have done this, perhaps not for parents but maybe for siblings, relatives or indeed friends and others.

Think of the situation of a person coming into the house as a carer who is not necessarily known to you but who has been contracted to do the work of bathing. They may not be known at all to the elderly person, if it is an elderly person. I remember when my mother passed away there were regular visits by healthcare workers into the house. Please be very clear about this: I am not reflecting on the vocation of caring for human beings, which is utterly and profoundly important and highly and significantly underpaid in this country and pretty much throughout the world. But I go back to the position of the Hon. Adam Searle in his closing statement the last time we were here, which is that this cannot happen.

The Hon. Adam Searle said that there is no possibility that there can be a person succumbing to assisted suicide or euthanasia unless they voluntarily agree; it is just not going to happen. He said that not only is it not going to happen, it cannot happen. The submission of the honourable member is that it cannot happen. There will not be, ever, a person succumbing to voluntary assisted suicide or euthanasia who otherwise would not want to end their life by assisted suicide and euthanasia. That is the position of the Hon. Adam Searle and the submission of all the sponsors of the bill. Yet I draw to the attention of the Committee to the possibility of a person unknown, a complete stranger, coming into the house under a contract of employment or contractual arrangement doing care work as described and potentially opening up this matter of a person ending their life. The Hon. Adam Searle, and I suspect other supporters of the bill, will say, "Greg, you are really over-egging this." They will say if I read it carefully I will see that clause 10 (3) provides as follows:

- (a) has palliative care and treatment options available, and
- (b) should discuss the palliative care and treatment options with the person's medical practitioner

That is sort of thrown in there, if I can describe it that way, as a bit of a sweetener. In other words, someone can talk about this with a person who they have no familial relationship with. They are actually in their home, invited in to do care work, probably on behalf of the individual's children but not necessarily so. In the context of that caring being done—and I will not read through it all; it is all described in the dictionary—they can move into a conversation. It can come up. And it is perfectly okay for it to come up if, as in clause 10 (1), the context is talking about the matter of palliative care and the possibilities around that.

I do not know what others might think, but I think it is utterly reprehensible to create this situation whereby the idea of voluntary assisted dying—which is the terminology used by the proponents of the legislation—which may never have been in the mind of that person gets put to them by an outside party. I find it utterly extraordinary that such a situation is perfectly okay and that the supporters of the bill are completely relaxed about it. Not one member is going to get up and contest the point I am making, which is that the bill does not provide for that. I am just extraordinarily surprised that this is the case. One can say, "Well, listen, you can go back further and there are iterations. There are doctors. There is the first doctor, the second doctor." No doubt we will hear later tonight, or at another time, all of these stages and steps. Members will say, "Listen, there are very tight and robust safeguards." I think the Hon. Adam Searle keeps repeating that terminology. That is language that is deliberately used to suggest that these are protections. But then you have the exemptions.

So let us be honest about it. Let us talk about the safeguards. I am perfectly happy to have proper discourse, discussion and debate about safeguards, but do not leave out the exemptions. Do not leave out the parts that can

obviate the protections that otherwise exist. In all the material I have read from the proponents of the bill—from the Hon. Adam Searle as the lead in this Chamber; the member for Sydney, Alex Greenwich, in the other House; and all the supporters—none of this is mentioned. Read all the literature that we have received over the course of the past five months. It is very well-produced material; there is no question about the quality of it. But these are key matters that we are raising today. I accept that the Committee is perhaps wondering why I am getting a little bit anxious about this. It is because this is what is in the bill. It is not what is in the books that Alex Greenwich sends out and the material from Dying with Dignity. We are talking about what is in the bill.

This is what the law is going to be. It is not what is in glossy brochures. For heaven's sake, we are legislators. This is going to provide for a regulatory system to provide for, on an ongoing basis, funding for people to end their life by assisted suicide and euthanasia. Yet these exemption provisions are not being discussed at all. I submit they are deliberately not being discussed because it raises too many questions. They are questions we should be bloody frightened about.

I have to say, I am scared that I might find myself in that situation in my old age: someone coming into wherever I am; a person, who is a complete stranger employed in the role, who is invited in, because whoever is looking after me—I do not know whether the children will actually want to look after me; I suspect probably not. I withdraw that. I hope at least one of them will, but I digress. In my own experience, and I am sure other honourable members have had this experience, of a person whom you do not know coming in and doing work—and once again, I make the point that I am not reflecting on the vocation of caring—but you do not know them. They are there being paid a hopelessly poor hourly rate, getting through the job quickly and having the chit-chat over their cups of tea. We have all sat there while these discussions go on, the chit-chats over the cup of tea. All things sorts of things get said and floated. Of course, most of those discussions are generally banter and all the rest of it.

But imagine the mother or grandmother at the toilet with the excreta running down her legs, desperate, having to be cleaned up, and the careworker, for example—I am not picking on the careworkers—having a cup of tea afterwards. Over that cup of tea, they discuss possibilities and talk about palliative care but then say, "In New South Wales we've got a Voluntary Assisted Dying Act. You know what? You can end your life. You can exercise choice." It may never have been in the mind of that person—never! In fact, they may have been surrounded by loving children who would crawl over broken glass to look after them until their dying breath. Yet the proponents of this bill are quite relaxed about the possibility of these healthcare workers, so described, having the latitude to be able to raise it with this person who knows they are dying. Their children know they are dying. But they do not need a bloody suggestion from a healthcare worker. Where does that come from, honourable members? Is that from a place of love and care, and the desire to look after human beings—our parents? I find it extraordinary that this is what is in the legislation. The Hon. Adam Searle supports it, and I am sure that in his response we will hear some comments about it. But at the end of the day, we are having to drag this out.

I will be very brief on this point. There was a complaint from Ms Cate Faehrmann about repetition with respect to these amendments being prosecuted. Do members know what the big difference is between November last year and May this year? Certainly you would know, Chair: a most extremely well conducted inquiry—although over a short timetable, which I was complaining about, but nevertheless—into the provisions of this bill by the Standing Committee on Law and Justice. Many members in this Chamber have been on that committee; I will not name them all. Simply put, it is one of the most important committees of the Legislative Council—I know all committees are important—in terms of looking at laws and trying to make assessments about whether these are good laws or not good laws, or laws that perhaps should be amended.

In my contribution to the second reading debate on this bill I cited all the evidence provided to that inquiry with respect to the submissions made and, particularly, the evidence provided by witnesses on the second day, 10 December. I am sure the Chair remembers it. It was a long day and the Chair presided over it most admirably, fairly and patiently, which I appreciate. There were times of some exchange but we got through that. On Monday 13 December we heard from some other witnesses. If honourable members have taken the time, as I am sure they have—and this includes the members who support the bill—to go back and read the Hansard transcript and that comprehensive evidence from the hearings on 10 and 13 December, along with the associated submissions, they will know that the issues I raised earlier and in the second tranche were raised by the witnesses.

For heaven's sake, I am not an expert on this stuff. I am not a QC. I am not a palliative care associate professor—but this is what they are saying. These people do not have any skin in the game, I submit, except to scrutinise the bill and place it up against this test: Are there dangers that potentially will have people who do not have any interest whatsoever in going down this path of assisted suicide or euthanasia being drawn into the net and dying accordingly? Members are told by the Hon. Adam Searle that this cannot and will not happen, and that has equally been said by the sponsors of the bill. It has been made very clear that we have got nothing to worry about because of the robustness of these matters to do with these procedures that we are going through right now.

I will not continue for much longer. I know I have been a bit, shall we say, anxious because I do feel anxious about this legislation. I submit that this is staring us in the eyes like the proverbials. It is in the bill. It is not what I am saying or making up. All the things I am saying about matters of caution—it is not Donnelly; he is no expert. This is what the people who came and gave evidence said. Do members know what was said by the people who support the bill and who gave their evidence on the first day? They said, "The bill's got safeguards. It's full of safeguards. There's just nothing to worry about. There really is nothing to worry about. The people who are raising issues are nothing but individuals who are implacably opposed to these laws, and you will never change them so you will need to understand them for that." I put that on the record. Putting that aside, these supporters of the bill say, "You don't need to worry because the bill is so comprehensive that that is the case."

I am sure that honourable members who have studied these laws around Australia, such as the Hon. Adam Searle, would be aware that in the State of Victoria, just down there south of the Murray River, its Voluntary Assisted Dying Act provides—I am quoting from a note here—that healthcare workers, which is the term used, are prohibited from raising voluntary assisted dying with a client. They are prohibited. South of the Murray in Wodonga, a grandmother or grandfather in the conditions that I have described cannot have a healthcare worker in such an intimate human relationship being able to raise the matter, which may never have been on the person's mind. They cannot say, "Listen, in this State there's assisted suicide and euthanasia." That cannot happen in Victoria. If a person goes over the border into Albury it is all different. We are told by the proponents of the legislation, such as the Hon. Adam Searle—and I acknowledge the presence in the gallery of Alex Greenwich, MP, the chief architect, key driver and proponent of the legislation, along with its sponsors—that this is perfectly okay. They tell us that all that has been proposed to tighten this up, that is, the excision that I am proposing, will actually create restrictions for voluntary assisted dying in New South Wales.

The Hon. Adam Searle's proposition is that to take out what I am seeking to have removed from the bill, which I think can be reasonably argued as a safeguard properly understood—in other words, preventing a healthcare worker from raising the issue of an innocent person who is never in a thousand years likely to ever think about wanting to end their life because they might have particular views, they might be religiously based, they just do not believe in suicide or they do not believe in having a doctor put a needle in their arm and that those individuals in Albury are in a completely different situation and, submitted by the proponents of the legislation—is in fact being obstructionist. In fact, it is obstructionist to put something in the legislation that would prevent those conversations being initiated—and the conversation is part of an exchange and there is talk about the matter of palliative care. But, nevertheless, it gets dropped into the conversation quite lightly.

At the end of the day we are being told with respect to amendments like this that they are being made in bad faith. We have been told that time and time again with respect to those amendments, and that those amendments are hostile. It is worth reflecting on that. This is the bill of Alex Greenwich, MP, the member for Sydney, and the Hon. Adam Searle, the sponsor and lead in this House. The proposition that they are putting is that this type of amendment is obstructionist and that this is a hostile amendment and it should be seen as such and disregarded. I will circle back to the point made by the Hon. Damien Tudehope. I utterly reject that proposition. Members are concerned that I am quite strong in my voice and presentation this afternoon because I feel very anxious about this.

I say to you, Chair—and I am not asking you to comment—fair dinkum, I could have sat down and done a filibuster as other States have and moved hundreds of amendments, but I did not do that. As I told the Hon. Adam Searle last night, I concentrated them into tranches to try to bring some focus. I did that. I deliberately did that because I understand that this Parliament has an intention. I understand that, but I move these amendments and the ones before and the ones hereafter because I am genuinely frightened that innocent people will get caught up in this regime. I have just used that as a simple example. I will be keen to hear from the Hon. Adam Searle about how that cannot happen and, in other words, how those conversations cannot happen. His proposition is that no-one is going to get brought into this.

**The CHAIR (The Hon. Wes Fang):** I am not seeking to interrupt the member, but I will be very concerned if we start addressing each other again like we did with the last amendment. Questions are to be asked through the Chair and then other members can address those questions through the Chair. The member will speak to the amendments as much as possible.

**The Hon. GREG DONNELLY:** I withdraw that. I apologise. I will conclude on that point, but there is more that I can say. I can quote chapter and verse from the myriad submissions to the inquiry from legal experts and medical experts. They are not just submissions; they are oral evidence that stands. Not only that, I invite honourable members, if they have not done so already, to read the answers to the questions on notice and supplementary questions. That universe of information from submissions, oral evidence, supplementary questions and questions on notice is so rich with information. I have to tell you, large amounts of it are absolutely alarming. This is not coming from people who are, as I said, particularly bent on opposing this for the sake of it or are being

obstructionist or are intellectually opposed or are religiously based or whatever you want to say. These are people who are looking at this and saying, "For heaven's sake. What are our legislators doing or not doing? Can't they read the bill?"

I accept that it was dealt with in the other place in November last year. But there had not been an inquiry, that you so ably chaired, and there had not been the reams of evidence from those expert legal and medical witnesses belling the cat about the fundamental problems in the bill. It is no answer for honourable members to come into the Chamber—and I do not say this in a disrespectful way—and simply not say anything about the matters that I am raising. You do not have to if you do not wish. That is a matter of your freedom. To simply not respond to it and come in and vote them down, you can do that, but this is all placed on record for a very deliberate reason. It is not because I want to read about myself in *Hansard* but for when people come in the not too distant future—like in Western Australia, where one person every other day is dying from assisted suicide and euthanasia. That is a relatively small State in population compared with New South Wales. I know a lot about that because I come from Western Australia.

We will start seeing those numbers in New South Wales. The Hon. Adam Searle and Alex Greenwich, MP, will acknowledge that this legislation is very similarly based on the Western Australia legislation. In fact, they proudly spoke about that as being such a good thing because, using their language, the matters, for example, of not requiring a specialist and having matters like I just described in the bill and having those exemption provisions are all very facilitative in enabling a person to get to the point that they submit that they have freely exercised a choice voluntarily, with no coercion, no pressure and no influence.

On the matter that people said, "Oh, listen, that guy is full of it this morning talking about the five stages of grief." The five stages of grief have been around for quite a while. We all know it. They are denial, anger, bargaining, depression and acceptance. What happens if this healthcare worker happens to be going in and doing the showering during the day or the week where the said person is depressed? They are depressed. They know they are going to die and they know it is relatively not far down the track. That is accepted. That is something that can be foreseeably predicted. Although, I will come back to that matter at some point in time about the diagnosis and prognosis of disease and illness.

What happens if that conversation happens on that day where the person is going through this phase of depression—which happens to people who find themselves in a tragic situation—and the planting of the seed in that person's mind of ending their life is at that point started? Do you know what? That can never, ever, ever be proved. That person will go to their death and no-one will know. It will be registered not as a suicide in New South Wales but as a death pursuant to voluntary assisted dying, and they will become a statistic. That is going to happen. I will come back to some evidence later on about that issue of coercion and pressure. I will not get into it now. But the matters raised in the evidence to the inquiry gave case study examples from professors and associate professors of palliative care medicine in Victoria of people having ideas planted in their mind of voluntary assisted suicide and euthanasia and, in some instances, succumbing to it. That was their evidence to the inquiry.

I will conclude my remarks. I appreciate the Committee's indulgence. I appreciate that I think some members at least think that I am being somewhat anxious about this. I can say to them that I am frightened about the provisions of this legislation, which provides those exemptions. The proponents of the bill, the Hon. Adam Searle, who is leading on the bill in this House, and Alex Greenwich, MP, say nothing about the fact that these cannot be exploited in the way I have described. As I said just a moment ago, we will never know because our mother or father will go to their grave or their cremation and that conversation may not have been something they shared with us. We will not know about the planting of the idea in a conversation with that person. They will be a statistic under voluntary assisted dying in New South Wales. This case study shows why I am so passionately opposed to certain provisions within this bill. I encourage members to support my amendments.

**The CHAIR (The Hon. Wes Fang):** I take this opportunity to encourage members to resist naming individuals in their contributions. There are a number of co-sponsors of the bill.

**The Hon. Adam Searle:** I think we all know that I have carriage of the bill.

**The CHAIR (The Hon. Wes Fang):** Perhaps members could use the terms "proponents of the bill" or "co-sponsors of the bill". It is not appropriate to single a member out because they are in the Chamber. It is important to remain respectful, which I believe has been achieved so far.

**The Hon. DAMIEN TUDEHOPE (Minister for Finance, and Minister for Employee Relations) (16:30):** I support the amendment. I would not have needed to support it if the previous batch of amendments moved by the Hon. Greg Donnelly had been passed. Fundamentally, the problem is that a healthcare worker making an unsolicited suggestion of voluntary assisted dying or euthanasia to a person should give rise to a circumstance that there is no presumption of voluntary consent. If we had removed that presumption, this would

not be enlivened as much. It could then be argued that the mere fact that someone suggested it to the person, without them having initiated the conversation themselves, was a circumstance upon which you could rely to establish that there was not voluntary consent. Because we have not gone down that path, it enlivens the problem where we are faced with a circumstance where someone has initiated a conversation and we are asked to infer or presume that the person has voluntarily consented.

It could have been dealt with if the circumstance of somebody else initiating the conversation becomes a hurdle that those relying on voluntary consent need to get over to establish the consent is still voluntary. As we did not go down that route, we are duty-bound to support this amendment, which states people should not initiate the conversation. It is a demonstration of voluntariness that you initiate the conversation about the death that you want to choose. That is a practical demonstration that the decision you are making is voluntary. I point out to members that this is real life. If the idea is planted in a person's mind by someone else, it should give rise to a concern about the voluntary nature of the decision. I will give two examples that are based on experiences in Canada, where there are similar provisions. The first concerns a man named Roger Foley, aged 42. Mr Foley was in an Ontario hospital due to a crippling brain disease. Roger experienced suicidal thoughts but wanted help for assisted living in his home. Health workers regularly suggested euthanasia to Roger, despite him repeatedly making it clear that he was not interested in that option. A lawsuit against the hospital states:

... the defendants gave Mr Foley a choice between suicide or medically assisted suicide, rather than simply working with him to relieve intolerable suffering in a respectful patient-centred manner.

I argue that if Roger Foley chose voluntary assisted dying, he would be doing so against a background where you could not infer or presume—as this bill provides—that it was voluntary. The second example concerns Candice Lewis, a 25-year-old Canadian woman who happened to have cerebral palsy. In September 2016 Candice went to the emergency room at Charles S. Curtis Memorial Hospital at St Anthony, after having seizures. Dr Aaron Heroux told her she was very sick and likely to die soon. He offered her assisted suicide. The doctor also proposed assisted suicide for Candice to her mother, Sheila Elson. The offer was repeated despite Candice and her mother making it clear that it was not an option Candice would consider. Dr Heroux told Sheila she was being selfish by not encouraging her daughter to choose assisted suicide. Candice later described how bad it made her feel that a doctor was offering her assisted suicide.

My observation is that people are naturally vulnerable when diagnosed with a terminal illness. The Hon. Greg Donnelly has on a number of occasions spelled out the five stages of grief which people go through when diagnosed in that manner. Any consideration of voluntary assisted dying should come, in my respectful submission, from the person themselves. Allowing healthcare workers to actively suggest it before the person has raised the matter will inevitably lead some people to go down that path while putting in doubt the presumption that the decision was voluntary. The Hon. Greg Donnelly made reference to the Western Australian and Victorian situations. In Victoria there is a provision, which the member would embrace, that the suggestion could not be made by a healthcare worker. Western Australia mirrors the proposed New South Wales legislation.

Let us look at what is happening. Of all recorded deaths in Victoria in the period January to June 2021, 0.5 per cent were recorded as a result of assisted suicide or euthanasia. In the corresponding period in Western Australia—where they have the provision for healthcare workers to suggest that people embrace voluntary assisted dying—1.7 per cent embraced voluntary assisted dying. There is a difference. I do not know, but I think a suggestion could be made that where the suggestion has been made by the healthcare workers, the uptake of the opportunity is potentially greater. For that reason it potentially—

**The Hon. Adam Searle:** It is not necessarily sinister, though.

**The Hon. DAMIEN TUDEHOPE:** It is not conclusive, but an inference could be drawn that it is the difference in the consent procedure that gives rise to the increase in the number of people taking advantage of the provisions of the legislation. My primary point is this: The bill as drafted includes the presumption and the circumstance where a healthcare worker can suggest to a person, without any other proviso or the like, the option of voluntary assisted dying. That should negate the suggestion that the decision is voluntary. In one sense, that is a really big defect in the drafting because if you want a bill where people have confidence in the voluntary nature of the decisions being made by people, you would want to make that an absolute pinnacle of where you start your premise. To allow someone to suggest that to a patient in the circumstances outlined in this bill makes the conclusion that there will be some people who will, because of the suggestions being made to them, avail themselves of those procedures where you can only conclude that the decision they make is not voluntary.

**The Hon. ADAM SEARLE (16:39):** My recommendation to honourable members will be that these amendments should not be supported. The amendments, in their effect, seek to gag healthcare workers from raising voluntary assisted dying with patients. In my view and in the view of the bill's other sponsors, the amendments risk leaving people who are terminally ill—who are experiencing intolerable suffering or who are fearful that they



will experience intolerable suffering—vulnerable in circumstances where they do not know about all of their end-of-life options. We know from the National Coronial Information System that in this State at least 20 per cent of suicides by people aged over 40 are associated with a terminal illness. That accounts for over 10 per cent of suicides. If a patient is expressing suicidal ideation, these amendments would prevent a healthcare worker from telling that patient that when things get too difficult, there are safe and lawful options available to go peacefully, surrounded by loved ones.

Healthcare workers are on the front line of the suffering caused by terminal illnesses or conditions, and they often encounter patients in distress. Their conversations in response can alleviate suffering and help patients make more informed decisions. During consultation on the bill last year, paramedics—among others—reported attending people in distress associated with a terminal illness, some of whom had attempted or considered suicide. They put forward a strong case for being able to inform patients in such situations that, should their suffering become too much, there are safe and lawful options available to end their suffering. In my view and in the view of the bill's sponsors, it is an extraordinary measure to legislate bans on conversations in medical and other healthcare settings, and it is out of step with informed decision-making.

Outside of Australia and New Zealand, no other law bans healthcare workers from initiating conversations about voluntary assisted dying with their patients. Even in Australia, only South Australia and Victoria include outright bans, with other States regulating those conversations, as this bill seeks to do. Western Australia, Queensland and Tasmania ban healthcare workers from initiating voluntary assisted dying discussions with patients, except if the healthcare worker is a medical practitioner or a nurse practitioner, but only if they also tell patients about their treatment and palliative care options. They are not pushing voluntary assisted dying as the only option. It is being able to be discussed in the context of all of the end-of-life care options. The bill that we are discussing also bans healthcare workers from initiating discussions with patients about voluntary assisted dying, unless a number of conditions are met. I will briefly and directly quote from clause 10 of the bill. It states:

- (1) A health care worker who provides health services or professional care services to a person must not, while providing the services ... initiate a discussion.

Members can read clause 10 (1). But subclause (2) does not apply to a medical practitioner in the circumstances where they also inform the person about the following:

- (a) the treatment options available to the person that would be considered standard care for the disease, illness or medical condition with which the person has been diagnosed,
- (b) the likely outcomes of the treatment options available to the person,
- (c) the palliative care and treatment options available to the person,
- (d) the likely outcomes of the palliative care and treatment options.

Subclause (3), which deals with the broader term "healthcare worker", also provides that the ban on initiating discussions does not apply, but only where:

... the health care worker also informs the person that the person—

- (a) has palliative care and treatment options available, and
- (b) should discuss the palliative care and treatment options with the person's medical practitioner.

Unless I misheard the Hon. Damien Tudehope, the provisions of the bill do not enable the healthcare worker to raise voluntary assisted dying without other provisos. It cannot be raised in a vacuum. It cannot enable a healthcare worker or a doctor to simply push one option onto a person who is vulnerable. But it does enable medical practitioners and healthcare workers to inform people in this situation of all of their end-of-life care options. The approach in the bill ensures that conversations initiated about voluntary assisted dying are always done in the context of treatment and palliative care options.

The bill protects a patient's right to know about all of their end-of-life options while providing a safe and regulated approach to medical conversations around the issue. While honourable members can regard these safeguards as different to those in Victoria, in my view they do not confer a lesser protection. I note the Hon. Greg Donnelly drew our attention to the outright ban in Victoria. I draw the attention of members to the Standing Committee on Law and Justice inquiry into the terms of the bill. Submission No. 72 from the Victorian Department of Health stated:

Another difference between Victoria's Act and the Bill relates to whether discussions regarding voluntary assisted dying can be initiated by a health practitioner. Victoria's legislation prohibits registered health practitioners, including medical practitioners, from initiating discussions with their patients regarding voluntary assisted dying. The Committee may be aware that this has been a reported frustration of Victorian medical practitioners who consider that such provisions may impede access for some people. It was intended that this requirement in our Act would provide public reassurance about such a new approach to end-of-life care. More than two years on it is useful to consider whether such reassurance would be required of new legislation.

This bill does take a different approach to Victoria, but only Victoria and South Australia have the outright bans. The submission of the Hon. Greg Donnelly and the Hon. Damien Tudehope is that somehow this ability to raise the issue—this planting of the idea that may not have crossed someone's mind—is malign and sinister. It is correct that one of the underpinnings of this provision is to enable healthcare workers to inform people of all of their end-of-life care options—not to push VAD as part of some Angel of Death crusade, but simply to inform people of all of their options.

Again, to the point raised by the Hon. Damien Tudehope about the Victorian regime, the Western Australian regime and the differential rates of take-up, of course, correlation is not causation. But even if it is the case that more people seek and obtain access to the scheme because they are aware of it, that is not a sinister outcome. It would be sinister if people had their voluntariness or their consent vitiated, or if they were acting under duress or under someone else's dictation—if some evil seed that has been planted cannot be unthought and takes hold of people and somehow propels them on the voluntary assisted dying path that they would not otherwise take.

**The Hon. Greg Donnelly:** We will get a chance to respond to this, Damien.

**The Hon. ADAM SEARLE:** Of course you will. But the point is this—

**The Hon. Greg Donnelly:** It is a beat-up.

**The Hon. ADAM SEARLE:** No. Someone may become aware of the VAD framework who was not otherwise aware of it. That is correct.

**The CHAIR (The Hon. Wes Fang):** I ask the Hon. Adam Searle to address his comments through the Chair.

**The Hon. ADAM SEARLE:** I apologise, Mr Chair. They still have to make the request and their request still has to be interrogated by the two doctors about whether they meet the eligibility criteria, whether they are enterprising upon this in a voluntary way and whether there is any duress or coercion and all those other safeguards built into the scheme. If someone who is unaware of VAD is informed—even in the circumstances raised by the Hon. Greg Donnelly where, if I am not reading too much into his contribution, there is a form of coercion, a kind of pushing of VAD on someone who is vulnerable or who might not otherwise have thought about it—the other provisions, safeguards and protections in the bill would prevent someone who is not genuinely seeking to go down that path from accessing and going through with voluntary assisted dying.

Even in the circumstances raised by the previous two speakers where someone may be pushed towards it, unless that becomes their genuine intention, they would not go through that process because if there is a lack of genuine consent and they do not meet the eligibility criteria, these matters can and will be picked up and permitted. Again, healthcare professionals informing people of all of their end-of-life care options is not and should not be seen as a sinister thing. All people should have full knowledge about what end-of-life care options are available to them. That is what clause 10 does.

If amendments Nos 4 to 7 on sheet c2022-076C as proposed pass, the right for someone to know about their options would be taken away. In my view, that would be a retrograde step which would have the effect of restricting knowledge of, and potential access to, the scheme for people who need it. Becoming aware of the scheme and the framework does not require a person to access it. Being informed that it exists does not compel someone to take it up. Honourable members should reflect on the respect we have for the rights of adults to make informed and meaningful decision about their lives in many respects. Members like the Hon. Damien Tudehope are all about freedom, personal choice and personal autonomy. In this area of life, as people are approaching the end, there should be no less freedom, no less autonomy, and that starts with the right to be fully informed. I urge honourable members to reject the amendments.

**The Hon. DAMIEN TUDEHOPE (Minister for Finance, and Minister for Employee Relations) (16:52):** I make a couple of points in relation to this. There is often a myth that is circulated that before this regime 10 per cent of suicides are suicides by people who take their life in circumstances where if this bill had been in place, that circumstance would have been satisfied. That is the figure identified by the honourable member. The figures do not bear it out because in Victoria where the legislation exists there are the same rates of suicide. Western Australia has the same rates of suicide. It is a myth and should not be relied upon to say that the bill is the panacea for people who are currently committing suicide by other means to take their life with "more dignity" because that is not the way that this has occurred. If you look at the statistics relating to suicide deaths, they are almost identical. In fact, I think recently there has been an increase.

**The Hon. Greg Donnelly:** It is higher.

**The Hon. DAMIEN TUDEHOPE:** That is right. That is the first thing in relation to that. The second thing is that in this State at the moment, if a person does not know about this legislation and about the availability which this legislation offers, they must be living under a rock. There has never been more publicity of a piece of legislation in this State that I can remember with regard to the voting patterns of people in the State and the proximity of the passing of this legislation. It has garnered more public attention than just about any other piece of legislation. The suggestion that this is necessary because there might be people unaware of these options available to them is, in one sense, a bit of sophistry because all people generally know in the circumstances outlined by this bill of the availability of all the options which this bill envisages.

The concern of the drafter of the amendment is that healthcare workers, notwithstanding other obligations, may be placed in a circumstance where they are indicating a preference for a particular course of conduct by the patient where they are suggesting that other alternatives might not be potentially available. I go back to the point I made earlier. The initiation of the conversation by someone to a patient suggesting that this might be an alternative should enliven a presumption that the final decision was not voluntary, which of course can be overturned by other evidence. But it should, in fact, enliven a presumption because the manner of the suggestion of the availability of voluntary assisted dying should enliven the presumption that the decision was not voluntary.

**The Hon. GREG DONNELLY (16:56):** I will not prolong the debate on this set of amendments. I will make some observations. I accept the Chair's patience and guidance of raising matters through him. Once again, this is as crystal clear as the purest water that one can possibly imagine and arises from the evidence given by experts at the inquiry. This information was completely unavailable to members in the other House in November last year. They did not have this material at their disposal, but we do. There is no excuse for us; it is all there. I have been hammering and hammering for people to read the evidence until they have told me to go away.

That evidence is a couple of points. With respect to the proposition of a healthcare worker raising it, I have two things to say. One is it is a complete misrepresentation that I am impugning ill motives whatsoever. Rather I am impugning the possibility of a conversation arising because it is facilitated by the legislation of the matter being raised which otherwise may not only have not been raised with the person ever but is absolutely inconsistent with and offensive to the individual. It has been raised by someone who, in effect, they know nothing about who comes in and does it. I am not impugning the individual who raises it because the legislation permits it. The legislation is an enabler; it says they can do it.

With respect to the overwhelming evidence by the medical experts, the professors, the associate professors, the geriatricians, the palliative care specialists—I can go on; I can read the whole witness list into *Hansard* but I will not. Experts, not me, made the point that with respect to matters to do with diagnosis and prognosis—and we are going to come to these—they are extremely difficult things to do. For the most highly qualified clinicians we could imagine, it is the most difficult thing to do. If it is so difficult for the most elite medical clinicians we could possibly find—to be able to make a diagnosis and give a prognosis about a life-limiting condition, be it a particular neurodegenerative one or another like a cancer, or whatever the case may be—where do we get off as legislators allowing healthcare workers to talk about assisted suicide and euthanasia? The person has not even been diagnosed. There is no prognosis, yet they are raising it with them. It is not as if they have even got a basis to do it.

The Hon. Adam Searle says that the legislation provides the opportunity. That is correct. That is what it would do. But where do we get off as legislators when the best medical minds tell us that diagnosis and prognosis at the end of life for a life-limiting illness is most difficult and there are high levels of error with respect to time lines for the end of life. No-one disputes this. The other side says, "There's 12 or six months, that's fine. In about 12 months or six months—these two GPs could work it out." For heaven's sake, GPs, as good as they are—and they are very important people and are the backbone of our national health system, which we have so much to be proud of—are given this task of diagnosing and making a prognosis of end of life. GPs do not do that. Specialists in the field try to do that and often get it wrong.

The point I am making is that with respect to the healthcare workers, the idea of enabling them to talk about something when there is not even a diagnosis or a prognosis, I just find, I have to say, mind-blowing. I reiterate the point made by the Hon. Damien Tudehope that, contrary to the position of the sponsors of the bill, they have misread—and that is the best complexion I am prepared to put on it—the research in this area. The argument goes like this: By providing voluntary assisted dying [VAD], the suicide rates will come down because a number of people are ending their life because they have no choice. But in all the jurisdictions where it is introduced, the aggregate suicide rates go up. So people still top themselves, if I can use that in an awfully vernacular way. They end their lives by suicide, as tragic as that is, and on top of that—and we cannot call this suicide—you have got the VAD numbers. That is the total. In every jurisdiction, as far as I can establish, the net result is greater. To suggest that VAD becomes a way in which to provide relief for all those people and that it

will bring down the suicide rate is, in my respectful submission, either reading the data and the research incorrectly or being deceptive. It is either one or the other; it cannot be both.

I might conclude my points there. I do want to end on this point so that there can be absolutely no misunderstanding. In the contribution I have specifically made about the people in the caring roles, the professional care services, I indicate I have the highest regard, as I am sure we all have, for those individuals who do such important work. There is no suggestion on my part that they are deliberately planting the seeds to produce outcomes for some malfeasant reason, but I am using this as an example of what could happen. Once again we are told that this cannot happen, that no-one will die involuntarily because it is voluntary and it cannot happen. I simply make the point that it may happen. Indeed, it can happen. The Hon. Damien Tudehope cited examples from other jurisdictions of it actually happening.

I am afraid of the possibility, which is why I am articulating this as strongly as I possibly can. It is because of the possibility that I am strongly prosecuting the argument, but in no way am I reflecting on the individuals. I have had very close association with professional care services in the context of my own family members. They are the most extremely caring people that I have had anything to do with. Nevertheless, I am concerned about the possibility of even an innocent suggestion of something that may never have been there. But, more to the point, the individual has absolutely zero qualifications—which cannot be disputed—to be talking about it because the person may not even have a life-limiting condition. They might be going through that fourth stage of grief, depression. How extraordinary is that, going through the fourth stage, a really bloody bad day, no sleep, basically pooped their nappies five times overnight, they go all the way through all that—and members are grimacing at these sorts of things, but this is what happens to people at the end of life—they are showered and changed overnight, and then in all of that depression the carer comes in, has a cup of tea, the banter and the talk.

How many people have had experiences with their own parents saying, "Gee, I wish this was all over." Let me tell you I have and I bet you every other member in this Chamber has. If you have not, it is because your parents are still alive. But I can say that that is a very common thing, and I suspect that may even be the case for me. I will be at the end of my life, I am so utterly down that the thought might pass my mind. It might not. I am going through this fourth stage and I want it to be all over. That is my thought. That is private to me. It is in my mind. No-one influences that. That is mine. It is not up to another party, another person, whoever that is. I do not bloody care whether it is a son or a daughter or a great aunt, whoever. It is not up to individuals to be planting the seeds in people's minds, people who are vulnerable and who may otherwise have never considered suicide that, "Yes, there is a path for you. There is a pathway. There are exemptions there. I'm safe. There's no problem for me. I can do this", and end up with situations of people having their lives prematurely ended.

**The Hon. DAMIEN TUDEHOPE (Minister for Finance, and Minister for Employee Relations) (17:07):** I seek the indulgence of the Committee to put one additional thought on the record. To the Hon. Greg Donnelly's point, my mother will turn 100—I think I mentioned that in my earlier speech—in two months' time. There are times when she does say, "I wish God would take me." When you get to 100 years of age, you probably think you have had a good innings, but she has a loving family around her. But one thing I would say about the refusal to countenance the amendment is this. By leaving the bill unaltered in this way and leaving the presumption as it is, this is an admission about what the underlying position of this bill is. It has moved from a situation where there is a cohort of people who say, "We want the freedom to be able to choose for ourselves the manner in which we will die and to die with dignity", and that argument has been proffered widely. But this is a much greater change of direction because when you get the healthcare profession with an opportunity of suggesting this, what this has moved to is creating a circumstance where this should be an option that is available for all. It is a fundamental change. It is not catering to those who say, "This is about my freedom of choice." It is rather moving the dial to say, "This is an option which should be available to everyone."

**The Hon. ADAM SEARLE (17:09):** I remind honourable members that access to the scheme provided for in the bill is only available to those with terminal illnesses or conditions that will end their life within six months or, in the case of neurodegenerative conditions, 12 months. It is not about making the option available to all; it is about making sure that everybody knows what options exist so that those who are terminally ill can make an informed decision.

**The Hon. GREG DONNELLY (17:09):** To that point, if I understand what the member said, his submission was—and please clarify through the Chair—to inform people about the possibility if they are terminally ill and ultimately would otherwise be eligible, meeting the criteria under the bill, to voluntary assisted suicide and dying. But it is also informing people who have nothing to do with it. They are just having a bloody crook day—they are in stage four. That person does not have anything, which goes to my point about no diagnosis, no prognosis. Having the seed planted in a person who may just be having a pretty bad day because they pooped their nappy five times overnight and had to be changed is extraordinary. That is extraordinary.

**The CHAIR (The Hon. Wes Fang):** The Hon. Greg Donnelly has moved amendments Nos 4 to 7 on sheet c2022-076C in globo. The question is that the amendments be agreed to.

**The Committee divided.**

Ayes ..... 12  
 Noes ..... 24  
 Majority..... 12

**AYES**

Amato	Farlow (teller)	Nile
Banasiak	Houssos (teller)	Poulos
Borsak	Martin	Rath
Donnelly	Moselmane	Tudehope

**NOES**

Barrett	Franklin	Pearson
Boyd	Graham	Primrose
Buttigieg (teller)	Higginson	Roberts
Cusack	Hurst	Searle
D'Adam (teller)	Jackson	Sharpe
Faehrmann	Mallard	Taylor
Farraway	Mitchell	Veitch
Field	Moriarty	Ward

**Amendments negatived.**

**Reverend the Hon. FRED NILE (17:23):** I will not move amendment No. 12 and amendments Nos 33 to 37 on sheet c2022-101B. By leave: I move amendments Nos 1 to 11, 13 to 32 and 38 to 45 on sheet c2022-101B in globo:

**No. 1 Self-administration**

Page 5, clause 12(3), line 20. Omit "a self-administration decision or a practitioner". Insert instead "an".

**No. 2 Self-administration**

Page 5, clause 12(3), line 21. Omit all words on that line.

**No. 3 Self-administration**

Page 6, clause 15(g), lines 19 and 20. Omit all words on those lines.

**No. 4 Self-administration**

Page 12, clause 28(1)(d), line 11. Omit "self-administering or".

**No. 5 Self-administration**

Page 12, clause 28(1)(e), line 14. Omit "self-administering or".

**No. 6 Self-administration**

Page 12, clause 28(1)(f), line 17. Omit "self-administered or".

**No. 7 Self-administration**

Page 12, clause 28(1)(h), lines 21 and 22. Omit all words on those lines.

**No. 8 Self-administration**

Page 12, clause 28(2), line 45. Omit "self-administering or".

**No. 9 Self-administration**

Page 13, clause 28(2), note, line 2. Omit "self-administering or".

**No. 10 Self-administration**

Page 24, clause 57(1), lines 38–44. Omit all words on those lines. Insert instead—

- (1) The patient may, in consultation with and on the advice of the patient's coordinating practitioner, decide a voluntary assisted dying substance is to be administered to the patient by the administering practitioner for the patient (an *administration decision*).

**No. 11 Self-administration**

Page 25, clause 58(1), lines 28–34. Omit all words on those lines. Insert instead—

- (1) The patient may, at any time, revoke an administration decision by informing the patient's administering practitioner the patient has decided not to proceed with the administration of a voluntary assisted dying substance.

**No. 13 Self-administration**

Page 27, clause 60(1)(a), line 16. Omit "a practitioner". Insert instead "an".

**No. 14 Self-administration**

Page 28, clause 62(2)(a), line 21. Omit "a practitioner". Insert instead "an".

**No. 15 Self-administration**

Page 29, clause 64(1)(a), line 25. Omit "a practitioner". Insert instead "an".

**No. 16 Self-administration**

Pages 30–32, line 21 on page 30 to line 8 on page 32, Part 4, Division 3. Omit all words on those lines.

**No. 17 Self-administration**

Page 32, clause 71(4), line 39. Omit "self-administered or".

**No. 18 Self-administration**

Page 33, clause 73(2), lines 17–39. Omit all words on those lines.

**No. 19 Self-administration**

Page 33, clause 73(3), line 40. Omit "a practitioner". Insert instead "an".

**No. 20 Self-administration**

Page 34, clause 73(3), lines 7–11. Omit all words on those lines. Insert instead—

- (g) the potential risks of administration of the substance.

**No. 21 Self-administration**

Page 34, clause 74(2)(b)(ii), lines 29–31. Omit "and stating whether the decision is a self-administration decision or a practitioner administration decision".

**No. 22 Self-administration**

Page 35, clause 76, lines 8–29. Omit all words on those lines.

**No. 23 Self-administration**

Page 35, clause 77(1)(b) and (c), lines 35–44. Omit all words on those lines. Insert instead—

- (b) states the dangers of administration of the substance.

**No. 24 Self-administration**

Page 37, clause 82(1)(a), line 9. Omit "a practitioner". Insert instead "an".

**No. 25 Self-administration**

Page 37, clause 82(3), line 17. Omit "practitioner".

**No. 26 Self-administration**

Page 37, clause 82(4)(a), line 19. Omit "a practitioner". Insert instead "an".

**No. 27 Self-administration**

Page 37, clause 83, line 41. Omit "practitioner".

**No. 28 Self-administration**

Page 39, clause 87(2), lines 10 and 11. Omit all words on those lines.

**No. 29 Self-administration**

Page 39, clause 87(3), line 13. Omit "a practitioner". Insert instead "an".

**No. 30 Self-administration**

Page 39, clause 87(4), line 17. Omit "self-administered, or was administered,". Insert instead "was administered".

**No. 31 Self-administration**

Page 39, clause 87(6)(a), line 26. Omit "self-administered, or was administered,". Insert instead "was administered".

**No. 32 Self-administration**

Page 40, clause 89(2)(e), lines 38. Omit "or self-administration".

No. 38 **Self-administration**

Page 60, clause 130(b), line 7. Omit "self-administers, or is administered,". Insert instead "is administered".

No. 39 **Self-administration**

Page 61, clause 133(1)(b), line 9. Omit "self-administering or".

No. 40 **Self-administration**

Page 69, clause 170(1)(b), line 18. Omit "self-administering or".

No. 41 **Self-administration**

Page 71, clause 174, line 14. Omit "self-administering or".

No. 42 **Self-administration**

Page 78, Schedule 1A.2, proposed section 41D, lines 9–17. Omit all words on those lines.

No. 43 **Self-administration**

Page 80, Schedule 1, proposed definitions of *administration* and *administration decision*, lines 7–10. Omit all words on those lines. Insert instead—

*administration decision*—see section 57(1).

No. 44 **Self-administration**

Page 81, Schedule 1, proposed definition of *practitioner administration decision*, line 42. Omit all words on that line.

No. 45 **Self-administration**

Page 83, Schedule 1, proposed definition of *self-administration decision*, line 16. Omit all words on that line.

I am happy for the Hon. Greg Donnelly to elaborate on the amendments.

**The Hon. GREG DONNELLY (17:25):** I know there are more learned gentlemen or gentlewomen—that is probably not the right phraseology—or "gentlepeople" in this House who could speak more eloquently about the amendments. Perhaps they might like to commence and I am sure I can follow on.

**The Hon. DAMIEN TUDEHOPE (Minister for Finance, and Minister for Employee Relations) (17:26):** I support the amendments moved by Reverend the Hon. Fred Nile, which seek to prevent State-authorized suicide by removing all references in the bill to "self-administration". What would the bill authorise to be self-administered? Clause 7 of the bill defines a voluntary assisted dying substance to be a Schedule 4 poison or Schedule 8 poison to be used for the purposes of causing a patient's death. If a person takes a poison for the purposes of causing their own death then this is indistinguishable from suicide. Evidence from other jurisdictions that have legalised assistance to suicide demonstrates only a minority of cases of assistance to suicide or euthanasia involve concerns about pain, noting that, even in those cases, the person may not actually be experiencing uncontrolled pain but may just be worried about the possibility.

To quote some data, for example, over 23 years' worth of data from Oregon shows just over a quarter—27.4 per cent—of those who ended their lives by ingesting a lethal poison under its law had any concern about pain. So why did they ask for a prescription for a lethal poison? What was the nature of their suffering? In Oregon, in 2019, one key reason for doing so for nearly six out of ten people—59.2 per cent—was a concern about being a burden on family, friends and caregivers. That is something that is, in many respects, not addressed. In Quebec, in 2021, nearly a quarter—24 per cent—of people who requested a medical practitioner to end their lives by a lethal poison made the request because of feelings of isolation or social isolation. In Washington state, in 2018, nearly one in ten—9 per cent—requested a lethal poison to end their lives due to concern about financial matters, including the cost of treatment or care. All of those reasons would qualify as suffering under this bill, as they do under similar legislation operating in Victoria.

I do not believe that death by State-approved administration of a lethal poison is a proper response to social isolation, loneliness and a feeling of being a burden to others, nor is it a proper response to concerns about pain relief when other options, such as specialist palliative care consultation, have not even been tried. There is a more important approach in relation to this and that is the messaging around suicide prevention. If we leave self-administration in this bill, it is likely to have a negative impact on achieving our shared goals under the *Strategic Framework for Suicide Prevention in NSW 2018-2023*. On page 15 of the framework there is a very significant statement. It reads:

The overarching vision of the Framework is that everyone in NSW lives with hope, wellbeing and good health, with fewer lives lost through suicide. The Framework represents the beginning of our journey towards zero suicides in NSW.

The problem with self-administration is that it must be characterised as a suicide and runs completely contrary to the objects of that prevention framework. Clause 12 (1) of the bill provides:

- (1) For the purposes of the law of the State, a person who dies as the result of the administration of a prescribed substance in accordance with this Act does not die by suicide.

The sponsors of the bill seem to think that, like Humpty Dumpty in Lewis Carroll's fantasy *Through the Looking-Glass*, they are the masters and can make words mean what they want them to mean. In supporting the removal of State-authorised self-administration of a lethal poison for the purpose of causing a person's death, I am supporting the removal of State-authorised suicide. The bill provides for a State-appointed board to issue an authorisation to a medical practitioner to prescribe an approved S4 or S8 poison in sufficient dose to cause the death to be self-administered by a person. Such self-administration clearly fits the usual definition and understanding of suicide.

Factually there is no difference between a person dying by intentionally ingesting a lethal poison prescribed under the bill and the same lethal poison being obtained illegally. It is a suicide in either case. The State-authorised prescription makes absolutely no difference to the lethal nature of the poison. The poison is poison. The nature of the poison is still to cause the death of a person. One effect of clause 12 (1) would be that suicides with State approval under the bill would not be counted in our suicide statistics. We would get closer to our target of zero suicides simply by not counting some suicides: those suicides approved under this bill. By removing self-administration from clause 12 of the bill, we would be removing the absurd statement that suicide is not suicide.

The National Mental Health and Suicide Prevention Plan was endorsed by the Council of Australian Governments on 4 August 2017 and is in place until 2022. It commits all Australian governments, including New South Wales, to, among other things, aim for zero suicides within healthcare settings. The inclusion of self-administration under this bill would do the exact opposite by actively facilitating suicide within healthcare settings. The national plan also commits New South Wales to reduce the availability, accessibility and attractiveness of the means to suicide. Far from contributing to this goal, if self-administration remains in the bill, it would not only specifically make lethal poisons available and accessible to people to use to commit suicide with State approval but also, by the very existence of this law, glamorise suicide and make suicide seem attractive.

There is a well-known phenomenon of suicide contagion called the Werther effect. When Goethe's novel *The Sorrows of Young Werther* was published in 1774, it led to a wave of suicides by young men. In my second reading speech on this bill I noted that one of the great concerns I have in relation to the use of voluntary assisted dying is that contagion effect. If Mrs Brown makes a voluntary decision to end her life in circumstances that are approved pursuant to this bill, then Mrs Smith down the hall, in circumstances where she has significant suffering and is quite elderly, might in fact be prompted to want to make the same decision for herself. As someone else in the aged care facility has done it, that contagion spreads to other people there who potentially just do not want to be a burden to their family anymore. Guidelines on media reporting of suicides reflect a concern to prevent suicide contagion. The bill would have the effect of excluding deaths by self-administration of a lethal poison authorised under its provisions from these guidelines by the legal fiction in clause 12 (1) that they are not suicides. This could allow even more glamorised reporting of such deaths, which is already common enough despite the guidelines.

The National Suicide Prevention Plan also commits New South Wales to establish a public information campaign to support the understanding that suicides are preventable. The inclusion of self-administration in the bill is built on an assumption that some suicides are not only unpreventable but should be individually authorised and facilitated by the State. This would undermine significantly the core messages of suicide prevention: that there is always hope, there is always a better way and there is always someone ready to help. The national plan also commits New South Wales to ensure that there is a whole-system approach to suicide prevention, with government, business and the community working together towards that one outcome. The provisions of State-authorised self-administration of a lethal poison under this bill would create a two-system model where suicide is publicly presented—albeit under the euphemism of "voluntary assisted dying by self-administration"—as a wise choice for some people in New South Wales and their suicide is actively facilitated. These people would be deliberately excluded from all suicide prevention efforts. This inevitably sends the message that some of us would be better off dead, and that suicide can be a peaceful, beautiful thing and a wise choice.

A study of United States data comparing States which have legalised assisted suicide with those which have not has shown that legalising assisted suicide is associated with an increase in the overall rate of suicides of 6.5 per cent, and of the rate among the elderly, 65 years and older, by 14.5 per cent. A study of suicide rates in Europe found that there is no reduction in the non-authorised suicide rate in those countries which have legalised assisted suicide and euthanasia compared with similar neighbouring countries where assisted suicide and euthanasia remain illegal. The Netherlands, which is the country with the longest continuous history of euthanasia in Europe, has seen the highest increases in non-assisted suicide in western Europe between 2001 and 2016. Belgium now has the highest female non-assisted suicide rate in the European Union. The conclusion is also supported by the evidence from Victoria, which I referred to earlier and will elaborate on for the following reason.



When arguing for the legalisation of State approved and funded assistance of suicide, as the Hon. Adam Searle has done in this place, then Victorian Minister for Health, the Hon. Jill Hennessy, claimed:

Evidence from the coroner indicated that one terminally ill Victorian was taking their life each week.

As with the bill before us, the Voluntary Assisted Dying Act 2017, which she introduced on behalf of the Victorian Government, excluded deaths by self-administration of a voluntary assisted dying substance for the purposes of causing a person's death from being considered as caused by suicide. By this legal fiction, such deaths are recorded as caused by the disease, illness or medical condition cited by a doctor in the application of a self-administration permit under the Victorian Act. If Hennessy's claim was correct, there ought to have been a decrease of around 50 deaths by suicide each year once the Act came into operation on 19 June 2019, as these terminally ill Victorians would now have access to a State-approved, State-funded way of intentionally causing their own deaths by ingesting a lethal poison. However, according to the Coroners Court of Victoria, there were 694 deaths by suicide in Victoria in 2017. In 2020, the first full calendar year in which the State-assisted suicide permits and the State-funded poison delivered service were in operation, there were slightly more deaths, at 698.

There is no evidence that the anticipated decrease of 50 deaths by non-authorised suicide each year has been achieved. Moreover, putting aside the legal fiction declaring a suicide pursuant to a permit issued by the Victorian Secretary of the Department of Health and Human Services not to be suicide, there were an additional 144 suicides in 2020 that were officially recorded by the Voluntary Assisted Dying Review Board as "Confirmed deaths: Medication"—that is, lethal poison was self-administered. Adding those 144 State-approved and State-funded suicides by the ingestion of State-supplied lethal poison to the 698 suicides without such State approval and facilitation gives a total of 842 suicides in 2020. The 144 suicides with State approval in 2020 are nearly three times the 50 suicides of terminally ill persons each year claimed by Minister Hennessy during the 2017 parliamentary debate.

To pass the bill would be inconsistent with the shared commitment to reduce suicides to zero under the *Strategic Framework for Suicide Prevention in NSW 2018-2023*. Self-administration of a poison is suicide. The strategic framework explicitly refers to "elderly people living with chronic physical illness and/or living alone" as a vulnerable group of people for which a selective suicide prevention intervention is required. The inclusion of self-administration of a lethal poison in the bill would fatally undermine such efforts by its suicide facilitation approach. Suicide is a distressing event that disrupts the lives of families, friends and communities who are bereaved. Like any other suicide, assisted suicide can profoundly affect surviving family members and friends, some of whom find out that their relatives have availed themselves of that practice and they did not even know.

A 2010 study found that almost 20 per cent of family members or friends who witnessed an assisted suicide in Switzerland, where assisted suicide is legal, subsequently suffered from either full post-traumatic stress disorder or subthreshold post-traumatic stress disorder—13 per cent and 6.5 per cent respectively. Proposals to promote assisted suicide for some people run an unacceptable risk of undermining efforts to prevent suicide for all other members of the community and of increasing the trauma suffered by families, friends and communities due to the suicide of loved ones. For that reason, I support the amendments moved by Reverend the Hon. Fred Nile and commend them to the Committee.

**The Hon. ADAM SEARLE (17:42):** Unsurprisingly, I do not support the amendments. I recommend that honourable members also reject them. The amendments seek to remove any capacity for a patient to choose to self-administer a substance, limiting their option to only have the voluntary assisted dying [VAD] substance administered by a practitioner. Respect for a person's autonomy over their life, their illness and their suffering is a fundamental value underpinning the bill. There are many reasons that a person may choose to self-administer a substance instead of having a medical practitioner administer it for them. Self-administration allows the patient the flexibility to administer the substance at a time and place of their choosing, without having to arrange for a medical or nurse practitioner to be there. They may want to return home to administer it, surrounded by family, in a place that is not practical for the administering practitioner to attend.

The decision could also be based upon the privacy that self-administration affords patients who want only family and loved ones to be present so they can have a talk, a hug and express their love for each other without anyone waiting for the process to be done. Some may even wish to undertake the process alone, and that should be their choice. The last days, weeks, months and, for some, years for people who are terminally ill often involve highly invasive medicalised procedures and experiences, sometimes with significant indignity and disempowerment. Many patients would want their last act to be a private one, without medical intervention. Why would we want to deny such patients their wish? The amendments proposed represent a fundamental shift for patient autonomy in the manner and timing of their death. The co-sponsors of the bill urge honourable members not to support the amendments. The Hon. Damien Tudehope essentially did a re-run of his greatest hits from his contribution to the second reading debate. He mentioned the matters—

**The Hon. Greg Donnelly:** I hope he does it again.

**The Hon. ADAM SEARLE:** I am sure you do. He mentioned experiences in other jurisdictions where people reported feelings of loneliness, financial concerns and being a burden on their friends and family. There was a little bit of misdirection by the Hon. Damien Tudehope. One might infer from his smooth and oily words that that is why people seek voluntary assisted dying. Under the framework of the bill, and indeed the framework in Oregon, you cannot get access to VAD because you are depressed, because you are lonely or because you think you are a financial burden. You must be terminally ill. The Hon. Damien Tudehope is concerned about suffering, because it can include existential suffering and emotional suffering, and that those could somehow amount to suffering for the purposes of the legislation and allow people into the framework who are not terminally ill. That is the implication of the contribution from the Hon. Damien Tudehope. The bill provides that you have to be terminally ill to access the framework.

Honourable members should also be mindful, as I pointed out in my contribution in reply, that in all of the situations that the Hon. Damien Tudehope spoke about the patients reported those feelings among many feelings expressed in multiple choice surveys. They reflect many of the understandable feelings people experience at the end of life. All patients reported a range of different kinds of suffering. The Hon. Damien Tudehope spoke about that very authoritatively, almost like he was the author of the amendments—talk about autonomy. As I said, it is just not true that any of those feelings form the basis of any VAD application. No-one was deemed eligible and no-one went through VAD because they felt lonely or like they were a burden. They were eligible because they were already dying. I will not labour that point. The other matter that was raised was that people who go through the process are not recorded as suicides. I note that through this debate we use the term in the bill of "voluntary assisted dying", while those who do not support the bill talk about "suicide", "euthanasia" and other terms.

**The Hon. Greg Donnelly:** It is assistance to suicide.

**The Hon. ADAM SEARLE:** I accept that. I invite members to reflect upon the words of Peter Joseph, the chair of the Black Dog Institute and a former chair of St Vincent's Hospital. He said, "Some people opposed to voluntary assisted dying seek to exploit the fact that any deliberate act to end one's life amounts to suicide. They deliberately draw false equivalence between those who end their lives alone and tortured by despair and those who wish to bring their suffering to an end in conditions of love and compassion. The violent end suffered by those driven to the irrational destruction of their life bears no resemblance to the peaceful death of people who are dying and who have made a rational choice to embrace a dignified end. In my opinion, we should always choose rationality, love and compassion over despair. That is why I support legislation to legalise and regulate voluntary assisted dying."

I draw the attention of honourable members to that important distinction. People who commit suicide do so for a whole range of reasons, but people who seek voluntary assisted dying do not want to die. They do not want their life to come to an end. In my personal experience, they want to live and they want to remain with their loved ones but they cannot because they are dying and that death is as certain as medical science can be. They can either "let nature take its course" and suffer pain, indignity and, in their view, the loss of themselves—which they would prefer not to because they would find it unacceptable—or, if the bill becomes law, choose the safe and regulated framework for voluntary assisted dying. Accessing voluntary assisted dying, as provided for in this bill, is not an act of irrationality. It does not necessarily come from a place of despair, but it is a choice that is available in circumstances where people are dying. I think that is a very big distinction from those who commit suicide. I think the legislation appropriately reflects that in the terminology, and in the fact that the lives that are brought to a dignified end under the framework of this legislation are not to be recorded as suicide.

Other contributors to this debate have said that people such as myself—the supporters and sponsors of the bill—are trying to distort language, to wish things away and to make things out to be what they are not. I do not think that is the case. Under the framework of this bill, I think we are drawing a very important distinction between ending a life at a time and choosing that is safe and dignified, and suicide as we have understood it, which is a fundamentally different proposition. I urge honourable members to reject these amendments standing in the name of Reverend the Hon. Fred Nile.

**The Hon. TAYLOR MARTIN (17:50):** I cannot support the amendments of Reverend the Hon. Fred Nile in relation to self-administration. My understanding is that the Committee stage is to make amendments that would make for a better bill, and I do not believe that removing the provision for self-administration would do such a thing to the bill as a whole. I will explain why I have come to that view and why it is entirely consistent with the intentions that I outlined in the second reading debate and also, to be frank, when we visited this subject in years gone past. I do not intend to take up too much time, so I will get straight to the point.

As I stated in earlier speeches, I would not like to see anyone die unnecessarily due to the passing of this bill, and the same goes for any amendments that we are considering tonight. Any of us following this issue

closely—as I am sure everyone in this place has been—would be aware that, in Victoria alone, it has been reported that, of the people who had gone through the process to be granted permission to be prescribed with the substance for self-administration, quite a high number have just kept it on hand as they progressed through the stages of succumbing to the disease they were diagnosed with. They do not, in fact, use it. That is the case for a lot of people who are prescribed the substance. In the end, they succumb to their illness with the drugs still in the cupboard, so to speak. But having them on hand alleviates their anxiety greatly.

To take that option away would only leave the choice of either not going through with the process at all, which is what I suspect Reverend the Hon. Fred Nile intends with these amendments, or of booking with a doctor and having it administered by a practitioner at a prearranged time and date. That time and date would then be absolutely final, because of the choice to schedule it ahead of time. It would take away the option for them to simply have the drug on hand as they fight their illness. In my view, that would be an unintended consequence of these amendments to the bill. That is why I cannot support them.

To reiterate, my view is that keeping the self-administration provision in the bill would mean that people could go through the process but then keep the drugs on hand, as we have seen in Victoria, and see out a natural death from the illness that they have been diagnosed with. That would happen more often than you would otherwise see with these amendments, where someone would need to choose a date and time and then have it administered by a doctor. In the data that is available from Victoria alone, from its Voluntary Assisted Dying Review Board, of the 413 doses of substance dispensed for self-administration, 282 were used through self-administration. That leaves 131 people who have had it on hand but actually died from their illness, in a somewhat natural death, in the meantime. Or, potentially, some of those 131 people are actually still alive with the drug in their cupboard at home. I think these amendments would lead to the unintended consequence I outlined earlier, and that is why I cannot support them.

**Ms CATE FAEHRMANN (17:54):** I make a brief contribution to the amendments moved by Reverend the Hon. Fred Nile and spoken to by the Leader of the Government. For anybody watching this debate, which is of interest to a lot of people in New South Wales, it would be quite disheartening to hear the way that the Leader of the Government equated suicide with what is being attempted by this bill. I think that people who have had loved ones suicide, and those who have had loved ones die from a terribly painful terminal illness, will be incredibly disappointed by the way the Leader of the Government has framed self-administration of a substance by somebody facing an excruciating death as a result of a terminal illness as suicide.

New South Wales and the Federal Government have strategies in place to reduce suicides. Suicide prevention is focused, often, on people who have their lives ahead of them. We know that the majority of people who commit suicide are younger. Some are suffering mental health issues such as depression and anxiety, and have no hope for the future. Patients seeking assisted dying do not want to die, but they are dying of an irreversible and untreatable condition and staring death in the face. Often, it is a choice in the very last stages—the last days or last few weeks of their illness. It is a very difficult decision that they choose to make to avoid terrible deaths. Assisted dying is a practice that gives mentally capable terminally ill individuals—I repeat, with a terminal illness—the ability to be able to choose to die peacefully in their sleep. To equate it to an often violent, disruptive act like suicide is quite offensive to those people who have lost loved ones to suicide.

**The Hon. Greg Donnelly:** You are kidding.

**Ms CATE FAEHRMANN:** No, I am not kidding. We have heard stories, time and time again, from people who are advocating for this compassionate bill. They have told us of the situations of people who had taken their own lives because of what was in store for them with their terminal illness. Their very aggressive cancer or their motor neurone disease was going to leave them unable to speak, unable to move, drowning in their own saliva and unable to breathe, ultimately, after however many months of not being able to communicate. We heard about the violent deaths, the suicides. They were the suicides of people. We heard about the impact on the first responders and on the loved ones who had to walk in and find that their loved one had killed themselves. On the contrary, we heard also of situations in other countries where assisted dying is legal, where, potentially, if it was legal in this place, those very same people would be telling a similar story to the stories we have heard from overseas. Instead of the very violent and disruptive 20 per cent of suicides that are due to a terminal illness, they would choose to die, probably, at a point further on in their lives, with their loved ones around them, dying peacefully—just assisted to die.

All of the quotes and statistics that have been put forward around the rates of suicide where voluntary assisted dying becomes legal, for those who have sought assisted dying, are indeed added on to the statistics of suicide, which happened in Victoria a couple of years ago. Organisations there were trying to make—in fact, indeed did make—the statistics look worse than they were. In all of those jurisdictions where assisted dying is legal, more people have not died, actually, but far fewer people have suffered. That peaceful process is exactly what we are trying to legislate tonight, and hopefully we will get there. With these terribly traumatic suicides that

too many people in this State are unfortunately committing—it is horrific for everybody concerned—it is a terrible thing to see that the Leader of the Government in this place is doing that.

**The Hon. GREG DONNELLY (18:01):** I will be brief. I was not going to make a contribution, but I have to respond to the submission that has been made. Just simply on this point: I do not actually have the name of the gentleman in my mind's eye, but one can Google it—this was in the Netherlands about five years ago or thereabouts. As I understand it, his position about suicide and assisted suicide—because it is obviously a very big feature in the country—was of someone who was not strongly committed one way or the other. This gentleman has been—since this happened about four or five years ago—on this extraordinary campaign of telling the world about the terrible aspects of this. This is what happened in that country. The first this gentleman found out about his mother going down the path of assisted suicide or euthanasia in that country was receiving in the mail a bill from the university hospital in the large city to come and pick up his dead mother's body from the mortuary at that hospital. Ms Cate Faehrmann talks about the position as articulated—well, there are plenty of others which are contrary to that.

**The CHAIR (The Hon. Wes Fang):** I ask the Hon. Greg Donnelly to direct his comments through the Chair.

**The Hon. GREG DONNELLY:** I simply make the point that you do not have to tell anyone—and this is the case with the New South Wales legislation. You will find out by the bye, through a phone call or a text that your parents—

**The Hon. Adam Searle:** Point of order—

**The Hon. GREG DONNELLY:** I withdraw that.

**The CHAIR (The Hon. Wes Fang):** Members must remember that comments need to be directed through the Chair. If we continue down that path, we will continue the respect that we have seen in the Chamber so far.

**The Hon. GREG DONNELLY:** I simply make the point that the advocates for this legislation construe, configure and argue a particular perspective on suicide—which they refuse to even call it—which utterly fails to comprehend what can be the profound, deep impact of a person committing suicide under circumstances provided through such legislation, and the absolute rippling out of profound damage to the family circle, the community circle and society at large about what is in effect saying, through a law like this, "Killing yourself or having someone kill you through being euthanised is good, legitimate, endorsed by the State and paid for by the State."

**Reverend the Hon. FRED NILE (18:06):** I reiterate the amendments that I have moved on sheet c2022-101B in globo that we are already discussing. The amendments seek to prohibit the unsupervised application of prescribed drugs. The self-administration of deadly drugs, as prescribed in the bill, greatly concerns me, especially with regard to the safety of the elderly. I remain utterly opposed to any legislation that supports any form of euthanasia or voluntary assisted dying or whatever terminology is employed to describe the act of killing a patient as a form of health care. Delivering death to our doors via deadly drugs is not safe. I implore my colleagues to support my commonsense amendments.

**The Hon. COURTNEY HOUSSOS (18:07):** I will make a brief contribution to debate on these amendments. At the outset I acknowledge the advocacy of Reverend the Hon. Fred Nile on the issues of preserving life over many decades. In fact, Reverend the Hon. Fred Nile has been a member of this House for longer than I have been alive, and I do not say that flippantly. I acknowledge his long advocacy, and I believe that he moves these amendments with the best intentions of preserving life. While I am acknowledging contributions, with your indulgence, Mr Chair, I acknowledge the incredible work of my friend the Hon. Greg Donnelly. He is moving a large number of amendments, and his passionate advocacy on this issue and his deeply held but highly informed views are on display for the Chamber tonight.

I pay tribute to all of the work he has done in this House and outside it over many months. Like him, I voted against the bill and I will support some of the amendments. In this instance, I am convinced by the arguments put on record by the Hon. Taylor Martin. Whilst I am opposed to this bill and I accept that Reverend the Hon. Fred Nile moves his amendments with the best of intentions, I acknowledge and accept that for some people, receiving the drugs and being able to simply hold onto them as their life follows its natural journey is going to be the circumstance. I acknowledge the figures from the Hon. Taylor Martin to show that is the case.

In my contribution to the bill's second reading debate I said that we need to learn from other jurisdictions. This is an instance where I think we can learn from other jurisdictions, and while I might not support the concept, I think that giving people the option of taking those drugs home and the comfort that provides them is preferable to only allowing them to book in an appointment with a doctor to end their life. I do believe that those unintended consequences outweigh the intentions of the amendments. For that reason I do not support the amendments.

**The Hon. CATHERINE CUSACK (18:10):** I speak briefly to refute an argument that has been made pretty continuously during the Committee of the Whole. It is a matter that I think we settled when the bill passed its second reading stage, and that is the idea that the bill is about suicide. It is assisted dying because it only applies to people who are already dying. It is about empowering them to manage a condition they are already in. Suicide is of a person who is not dying. That difference is really simple. I think that was very much finalised when the bill passed the second reading stage. I know we are still going to hear the words "suicide" and "killing" but I do not believe either of those words are appropriate in this discussion because the bill applies to people who are dying and it is empowering them to manage their death. That is not suicide at all and it is offensive, frankly, in terms of the pain and the management of genuine suicide issues.

In relation to the amendments, having made that decision to empower people to manage their deaths, it makes no sense that they would then not be permitted to personally undertake those actions themselves. It completely undercuts the decision of the Parliament to give that person power. As I said in my contribution to the second reading debate, an important issue to me, and a persuasive one, is that some people who are dying can withdraw the treatment that is keeping them alive and cause their death that way, which is perfectly legal at the moment. People requiring respiratory support can do that. But if a person has a different condition, they cannot do that. That is why the bill will give equity in terms of empowerment and choice to people. To prohibit that choice and freedom for people who are undertaking voluntary assisted dying when it is not prohibited at all for people who are simply withdrawing treatment does not seem coherent to me. It is the principle of empowering people equally in a very distressing situation. I also thought the Hon. Taylor Martin spoke very well and I endorse and appreciate his comments.

**The CHAIR (The Hon. Wes Fang):** Reverend the Hon. Fred Nile has moved amendments Nos 1 to 11, 13 to 32 and 38 to 45 on sheet c2022-101B. The question is that the amendments be agreed to.

**Amendments negatived.**

**The Hon. ROBERT BORSAK (18:14):** By leave: I move amendments Nos 1 and 2 on sheet c2022-088B in globo:

**No. 1 Palliative care**

Page 6, clause 15. Insert after line 8—

- (ba) the person has been offered free palliative care and treatment under an authorised palliative care plan, and

**No. 2 Palliative care**

Page 6, clause 15. Insert after line 22—

- (2) In this section—

*authorised palliative care plan* means a palliative care plan that provides for the delivery of a level of palliative care and treatment that, at a minimum, complies with the requirements prescribed by the regulations for this section.

It is impossible to have this debate without debating in full the options that the terminally ill have for palliative care, which in this State is not many, especially for rural communities. That is why it is imperative that a person is offered free palliative care and treatment under an authorised palliative care plan that would provide for the delivery of a level of palliative care treatment which, at a minimum, complies with requirements prescribed by regulations. We know that palliative care practices are highly effective, with a 98.5 per cent success rate in pain control. We also know that persons only die in pain when effective care services are not funded or delivered or, in some cases, not sought.

The Australian Institute of Health and Welfare's report into palliative care services in Australia states that "specialist full-time equivalent proportion per 100,000 falls to 0.4 in our inner and outer regional areas". That is one-fifth of the international benchmark. The numbers are so low in remote areas that results are simply zero. No wonder people in pain in rural communities want to end it all immediately. The PM Glynn Institute's breakdown of palliative care physicians and nurses by residential region is zero in remote New South Wales. Its overview of palliative care physicians and palliative care nurses working regional and remote New South Wales states that "in some cases data for remote New South Wales New South Wales were omitted due to very low counts", and that "analysis of such data would not be meaningful". The shortage in our regional and remote areas raises concerns around equity in the provision of palliative care and access to it. If a person lives in the bush, most often they have no choice but to die an agonising, painful death. That is no excuse to implement voluntary assisted dying. It is not compassion; it is government policy. That is what is causing this.

How can anyone honestly stand in this Chamber and claim that a person can have a real and effective choice to end their life through assisted suicide when palliative care is practically non-existent in regional and

remote areas of New South Wales? Funding palliative care in the regions is more important than funding suicide for people who are unwilling to receive palliative care. The Government and members of Parliament should be doing all they can do to address inequities in health care, particularly in relation to equal access. We know that those in our regions experience lower life expectancy. Turning these statistics around should be a priority of government, but instead we get assisted dying as a priority.

With the shift from over-serviced Sydney to the bush by tree changers, who are also mostly empty-nesters, do they understand they are moving at a time in their lives when they will most need palliative care? I think that most do not. They assume all is equal in services, which we know is far from the truth, especially for end-of-life options for care. Palliative care will simply not be available; suicide will be their only option. That is disgraceful. Those in remote areas either do not have the option for palliative care or cannot afford to access it. The Australian Catholic University's submission to the inquiry into the Voluntary Assisted Dying Bill states:

If the choice is between assisted dying on the one hand, and the absence of effective pain and symptom control and accompaniment by family and carers on the other, it is a false choice and one which it is unjust to offer.

Palliative care is a human rights issue. The United Nations Committee on Economic, Social and Cultural Rights wrote:

... States are under an obligation to *respect* the right to health by, inter alia, refraining from denying or limiting equal access for all persons, including prisoners or detainees, minorities, asylum-seekers and illegal immigrants, to preventive, curative and palliative health services ...

Yet New South Wales has half the recommended number of palliative care physicians and just over 1 per cent of the New South Wales nursing workforce trained in palliative care. As I stated earlier, palliative care is highly effective at 98.5 per cent success rate in pain control and persons only die in pain when effective palliative care services are neither funded nor delivered or in fact are denied. It would be a dereliction of duty of every member of the Legislative Council to continue to deny suitable and fully funded palliative care services in our regional and remote parts of New South Wales.

I know the VAD proponents are politically intolerant of other opinions; yet these are the very same people who care more for the life of battery chickens than for the comforting of a human being at the last stages of their life. Get rid of humans as soon as possible! Fight for the rights of a chicken! How bizarre is that? Human life will always be intrinsically worth more than a chook. Funding quality palliative care where and when it is needed in the regions is more important than funding suicide for persons who are unwilling to receive palliative care. The reality is that even a person who has selected VAD as an option will want and need palliative care. It is as simple as that. To not provide it is unconscionable and cruel. This is what these amendments are all about and this is what they seek to achieve. I commend the amendments to the Committee.

**The Hon. GREG DONNELLY (18:21):** I will make a contribution, if I could, and I will keep it to the point. I fully support the amendments moved in the name of the Hon. Robert Borsak—a person who has thorough, detailed and longstanding knowledge, particularly with respect to the deficiencies of the availability of palliative care in regional, rural and remote New South Wales and the horrific implications that flow from that. That leads back to a discussion, which I will not spend a lot of time on but just mention, and that is the issue of suicide in regional, rural and remote New South Wales—a shameful situation that this State finds itself in.

I briefly mention that if anybody in the Legislative Council has a microsecond of doubt about the parlous nature of the provision of palliative care services to our brothers and sisters in regional, rural and remote New South Wales, can I implore you to read the report recently tabled in the Legislative Council on an inquiry I had the privilege of chairing, Portfolio Committee No. 2 – Health, Health outcomes and access to health and hospital services in rural, regional and remote New South Wales. The report specifically deals with the matter of palliative care. I ask members to read that.

Can I say that this is completely accurate: Before this debate today, I went through the Hansard transcript of every hearing day of this inquiry with respect to our visits to Deniliquin, Cobar, Wellington, Dubbo, Gunnedah, Taree and Lismore. Tragically, we were not able to visit, as we had hoped, a number of regional centres. The chair of this committee participated in the inquiry and was most helpful in assisting us to navigate and understand matters outside of Newcastle, Sydney and Wollongong in terms of the lie of the land. It is one of my great regrets that the committee never got down to his neck of the woods and particularly south-eastern New South Wales. Nevertheless, the committee did remote hearings by virtue of the COVID scenario. In my tabulation of the times that palliative care came up at those public hearings and ones by teleconference, I actually ran out of Post-it notes.

There were so many instances of evidence, be they from mayors, general managers, local individuals trying to organise palliative care, community groups—I can go on and on and on about the parlous nature and the utter neglect that has transpired with respect to the provision of palliative care services in regional and remote New South Wales. We should hang our heads in shame about the failure, whereby our brothers and sisters find

themselves in situations where there is the idea of ending their life at their own hand because there is nothing available for them. Can I just say that I am not talking about Rolls Royce or specialist palliative care, which commences at the diagnosis, ramps up and is multidisciplinary with all the whole bells and whistles—what we all hope we have available to us when we reach the end of our life. This is the provision or rather the failure to provide syringe drivers dispensing morphine to elderly men and women.

**The CHAIR (The Hon. Wes Fang):** I invite the Hon. Greg Donnelly to address the Chair.

**The Hon. GREG DONNELLY:** I apologise. This is going on now. It is an utter disgrace. We should hang our heads in shame and do everything we possibly can to increase the pressure on us all. We know that governments come and governments go, but it does not matter who is in government. Whoever is in government in March 2023 will be the government of the day. We should do everything we can possibly do, if this legislation is passed, to put upward pressure as far as we possibly can to impress on the government of the day—I will conclude on this point—consistent with the work done by Dr Joe McGirr in the other place whereby the principles of the bill were altered. I will read them briefly. I know the Hon. Robert Borsak will be aware of this because I am sure he was speaking to Dr McGirr at the time about the importance of this, where the principles go on, *inter alia*:

- (i) a person who is a regional resident is entitled to the same level of access to ... palliative care and treatment, as a person who lives in a metropolitan region,

We have a bloody long way to go. There is a massive gulf and we have to do something about it. I commend these amendments to the Committee because they will help to get us to where we need to be.

**The Hon. ADAM SEARLE (18:28):** I acknowledge the contributions of the Hon. Robert Borsak, who moved the amendments, and the contribution of my friend and colleague the Hon. Greg Donnelly. I join with them in their critique of the failings of the current health system, particularly in rural and regional New South Wales and particularly in relation to the provision of palliative care. I totally agree with the sentiment and indeed the passionate exhortation by the Hon. Greg Donnelly that each of us in this place must do everything we can to improve the quality and availability of palliative care, wherever people might live in New South Wales. That is an objective that I think should be beyond partisan politics. I know it is something that honourable members join together in seeking.

I note that in the former Treasurer and current Premier's contribution in the other place, he also acknowledged the need to do more in the palliative care space. I agree that there should be triggers in the bill to try to get government—whoever comprises the government—to lift its game in this respect. It is the case that most patients at the end of their life are already receiving palliative care, and the data shows that most patients who request voluntary assisted dying will have already received palliative care. In Victoria, for example, 84 per cent of patients were receiving palliative care. In Oregon, which seems to get a mention in many of these debates, where voluntary assisted dying has been operating for 23 years it has reached 95 per cent.

**The Hon. Greg Donnelly:** And in New South Wales?

**The Hon. ADAM SEARLE:** I do not know what the figure is—well, we do not have voluntary—

**The CHAIR (The Hon. Wes Fang):** Order! Interjections are disorderly. All comments are to be directed through the Chair, lest we find ourselves in another situation.

**The Hon. ADAM SEARLE:** Through the Chair, there are no comparative figures for New South Wales because we do not have voluntary assisted dying. In terms of how many people who accessed voluntary assisted dying had been through palliative care, we do not have lawful voluntary assisted dying at the present time, therefore we cannot make an exact comparison. Under the bill, patients seeking voluntary assisted dying will benefit from having two experienced medical practitioners inform them about palliative care options that are available. General practitioners provide palliative care to patients across the State every day, and are they well placed to inform patients about what options exist.

Amendments to the bill moved by the member for Port Macquarie in the other place strengthened these provisions by ensuring that the Health Secretary creates training, information and resources to help doctors comply with the requirements. However, in the view of the bill's co-sponsors, requiring patients to be offered a certain level of palliative care as set out in an authorised palliative care plan as determined by regulation, as proposed by the Shooters, Fishers and Farmers amendments, represents a significant barrier that would make it harder for eligible people to get access to voluntary assisted dying.

Every patient will have different palliative care needs depending on their circumstances, including their disease and its progression and their personal predispositions. Creating a plan that has any meaning will take time and may not be appropriate, based on a range of circumstances. Offering a patient a palliative care plan in response to a request for voluntary assisted dying could also risk conflating the two, and patients may be confused about

how the offer relates to their request. Palliative care and voluntary assisted dying are both end-of-life options and treatments. They can co-exist, but the bill must be clear that they are two separate things. I think the Hon. Greg Donnelly made the point in his contribution to the second reading debate that palliative care and voluntary assisted dying are very different.

The bill already ensures that patients have the information they need to make a decision about whether they want to seek further advice on palliative care, but making it a requirement in the bill that patients cannot access voluntary assisted dying until they received an offer and a plan, as is proposed, would create a barrier that is unnecessary and would be unwelcome to those who seek and need access to voluntary assisted dying. I understand the genuine place from which the amendments arise, but the co-sponsors of the bill recommend that these amendments not be supported.

**The CHAIR (The Hon. Wes Fang):** The Hon. Robert Borsak has moved amendments Nos 1 and 2 on sheet c2022-088B. The question is that the amendments be agreed to.

**The Committee divided.**

Ayes .....16  
Noes .....20  
Majority.....4

**AYES**

Amato	Houssos	Nile
Banasiak	Martin	Poulos
Borsak (teller)	Mason-Cox	Rath
Donnelly	Moriarty	Roberts (teller)
Farlow	Moselmane	Tudehope
Farraway		

**NOES**

Barrett	Graham	Primrose
Boyd	Higginson	Searle
Buttigieg (teller)	Hurst	Sharpe
Cusack	Jackson	Taylor
D'Adam (teller)	Mallard	Veitch
Faehrmann	Mitchell	Ward
Field	Pearson	

**Amendments negatived.**

**The CHAIR (The Hon. Wes Fang):** I will now leave the chair. The Committee will resume at 7.30 p.m.

**The CHAIR (The Hon. Wes Fang):** I call on the Hon. Sarah Mitchell to move amendments Nos 1 and 2 on sheet c2022-065A.

**The Hon. SARAH MITCHELL (Minister for Education and Early Learning) (19:30):** By leave: I move amendments Nos 1 and 2 on sheet c2022-065A in globo:

No. 1 **Incorrect cross-reference**

Page 9, clause 22(d), line 34. Omit "(5)(b)". Insert instead "(5)".

No. 2 **Incorrect cross-reference**

Page 10, clause 23(2)(i), line 11. Omit "(5)(b)". Insert instead "(5)".

These amendments are technical and inconsequential in nature. They aim to fix two incorrect cross-references that have come about following amendments moved in the other place. Clause 21 (5) (b) has been removed from the bill, and therefore references to it are no longer applicable. The amendments purely update the cross-references at clauses 22 (d) and 23 (2) (i) so that they refer to section 25 (5), which is the appropriate reference.

**The CHAIR (The Hon. Wes Fang):** The Hon. Sarah Mitchell has moved amendments Nos 1 and 2 on sheet c2022-065A. The question is that the amendments be agreed to.

**Amendments agreed to.**



**The CHAIR (The Hon. Wes Fang):** Mr Donnelly, you can move whichever amendments you would like at this stage. Are you moving amendments Nos 8 to 15 on sheet c2022-076C?

**The Hon. GREG DONNELLY (19:33):** By leave: I move amendments Nos 8 to 15 on sheet c2022-076C in globo:

**No. 8 Referral to psychiatrist or psychologist**

Page 11, clause 27(1), line 13. Omit "unable to decide". Insert instead "deciding".

**No. 9 Referral to psychiatrist or psychologist**

Page 11, clause 27(2), lines 21–31. Omit all words on those lines. Insert instead—

- (2) The coordinating practitioner must refer the patient to one of the following registered health practitioners to decide whether the patient meets the criteria in section 16(1)(e)–(g)—
  - (a) a psychiatrist,
  - (b) a clinical psychologist,
  - (c) a clinical neuropsychologist,
  - (d) a forensic psychologist.

**No. 10 Referral to psychiatrist or psychologist**

Page 11, clause 27(3), lines 32–35. Omit all words on those lines. Insert instead—

- (3) If the decision of the registered health practitioner to whom the referral is made is that the patient does not meet all the criteria in section 16(1)(e)–(g), the coordinating practitioner must adopt the decision.
- (3A) If the decision of the registered health practitioner to whom the referral is made is that the patient meets all the criteria in section 16(1)(e)–(g), the coordinating practitioner may adopt the decision.

**No. 11 Referral to psychiatrist or psychologist**

Page 11, clause 27(4), line 36. Omit "psychiatrist, registered health practitioner or other person". Insert instead "registered health practitioner".

**No. 12 Referral to psychiatrist or psychologist**

Page 17, clause 38(1), line 5. Omit "unable to decide". Insert instead "deciding".

**No. 13 Referral to psychiatrist or psychologist**

Page 17, clause 38(2), lines 13–22. Omit all words on those lines. Insert instead—

- (2) The consulting practitioner must—
  - (a) adopt the decision, made by a registered health practitioner to whom a referral was made under section 27(2), that the patient meets all the criteria in section 16(1)(e)–(g), or
  - (b) refer the patient to one of the following registered health practitioners to decide whether the patient meets the criteria in section 16(1)(e)–(g)—
    - (i) a psychiatrist,
    - (ii) a clinical psychologist,
    - (iii) a clinical neuropsychologist,
    - (iv) a forensic psychologist, or
  - (c) decide the patient does not meet the criteria in section 16(1)(e)–(g).

**No. 14 Referral to psychiatrist or psychologist**

Page 17, clause 38(3), lines 23–26. Omit all words on those lines. Insert instead—

- (3) If the decision of a registered health practitioner to whom a referral is made under subsection (2)(b) is that the patient does not meet all the criteria in section 16(1)(e)–(g), the consulting practitioner must adopt the decision.
- (3A) If the decision of a registered health practitioner to whom a referral is made under subsection (2)(b) is that the patient meets all the criteria in section 16(1)(e)–(g), the consulting practitioner may adopt the decision.

**No. 15 Referral to psychiatrist or psychologist**

Page 17, clause 38(4), line 27. Omit "psychiatrist, registered health practitioner or other person". Insert instead "registered health practitioner".

The question of choice and voluntarism is at the heart of this legislation. It seems to be one of the matters not contested between those who support and those who oppose this law and these sorts of laws, not just in this State or Australia but around the world. Choice depends on fully informed consent and genuine decision-making capacity and voluntariness. For those who think that a person's choice to request a prescription to be supplied a

lethal poison for the purposes of suicide, or to ask a medical practitioner to directly end their life by administration of a lethal poison, should be given effect to, this bill as it stands fails to ensure, in my submission, that such requests are genuinely fully informed—in other words, voluntary and made with capacity. Doctors regularly miss signs of elder abuse and coercion. The bill will not prevent an elderly person being bullied or subtly persuaded to ask for their life to be ended for someone else's convenience or, in fact, gain.

If I could pause there, I think we are all intimately aware of the extraordinary work that has been done to uncover elder abuse, not just in this State but around Australia, and it is something that we should all be greatly concerned about, certainly in the context of opposing a law like the one that is before us. Elder abuse, including from adult children, with what is referred to, and commonly known in the parlance today, as "inheritance impatience" is a growing problem in Australia. This makes the bill as it stands particularly unsafe for the elderly. The parliamentary report on elder abuse in New South Wales, which I had the privilege of chairing, referenced the failure of professionals to identify undue influence and so unwittingly facilitate elder abuse.

Dr Henry Marsh, British neurosurgeon and proponent of legalised assisted suicide and euthanasia—so he is a proponent; I stress that—has acknowledged the possibility of coercion and elder abuse leading to wrongful deaths under such a law, but he simply does not care. I think that is a profound sadness. This is the quote—quoting him directly—from Dr Marsh:

Even if a few grannies get bullied into [suicide], isn't that the price worth paying for all the people who could die with dignity?

I trust, and I firmly would believe, that not one honourable member would want to be associated with such a comment or thought, and I trust that no honourable member who has voted for the bill at the second reading stage in any way would countenance such thinking, let alone action. The *National Elder Abuse Prevalence Study: Final Report*, a significant report commissioned by the Commonwealth Government and published by the Australian Institute of Family Studies in December 2021, found:

The estimate for the prevalence of elder abuse among community dwelling people aged 65 and older in Australia is 14.8%, based on findings from the SOP. This estimate is based on experiences reported in the past year in the survey. The most common form of abuse is psychological abuse (11.7%). Neglect is the next most common abuse subtype at 2.9%.

For the other subtypes, prevalence rates are 2.1% for financial abuse, 1.8% for physical abuse—

and, shamefully and terribly, 1 per cent for sexual abuse. This data is stated on page 2 of the report. The report puts the mirror up to us in Australia. Shameful as it is, this is what we are doing as a nation in terms of our treatment of our elders. Each of these abuse types is relevant for assessing the safety of the bill, which allows a lethal poison to be prescribed and supplied to an elderly person. It would be naive and disingenuous to ignore the risk of the link between elder abuse and what is provided for in the bill. The report goes on—and this is just profoundly sad:

Adult children were most likely to commit financial, physical, and psychological abuse. Sons were almost twice as likely as daughters to commit financial abuse. Adult children were on par with intimate partners as perpetrators of neglect.

...

Intimate partners also featured commonly as perpetrators of physical, psychological, and sexual abuse.

...

Most commonly, perpetrators were reported to have ... financial problems (nearly one in five). The most common problems associated with financial abuse were financial problems.

That is unsurprising. Inheritance impatience, a term I have used previously in my contributions to debate on this bill, was a characteristic of 19.1 per cent of abusers in Queensland in 2018-19. In Queensland one in five elder abuse perpetrators, as defined in the study, were associated with abuse linked to inheritance impatience. What does inheritance impatience mean? It means they want to get their hands on the bloody money. Elder people may be at risk from adult children and intimate partners seeking to hasten the death of that person for financial benefit, or to simply remove the need for providing ongoing care by bullying or nagging the person to make requests under this bill, from a first request through to an administration request.

Members might think that is tongue in cheek, but we will come to the matter of pressure and coercion in due course. I note there are other ways of giving people a nudge. All of us, being elected politicians, know about how to nudge. Under the bill, if a person is supplied for self-administration those children and intimate partners may bully, cajole, trick or even physically force the elderly person to ingest the poison. The bill provides no protections whatsoever once the lethal poison is prescribed and supplied. Once it is done, it is done. Any protection must be built in to the initial assessment of the person, free of the coercive circumstances. The report also found:

... people with poorer health were more likely than those with better health to report experiencing elder abuse. Having a disability was associated with a higher likelihood of experiencing elder abuse.

Low social support and lack of social contact were associated with a higher likelihood of experiencing elder abuse.

The report found a correlation between all abuse subtypes and low social support, including social isolation and loneliness, which is a terrible blight that affects so many people in our society today. It found that a low sense of social support is the highest risk factor for physical abuse, at 30.4 per cent, and the second highest risk factor for financial abuse, at 29.8 per cent. I note there is also a correlation between isolation and loneliness and requests for euthanasia. I am sure honourable members have been studying the situation in Canada in recent times, which I have to say is extraordinary. For example, the sixth annual report for Quebec reported that for the period April 2020 to March 2021 some 24 per cent of people gave as a reason for wishing to end their life by lethal injection the fact that they experienced "isolation or loneliness". I ask members to dwell on that for a moment.

The report made very significant findings about how medical practitioners performed in identifying and acting on elder abuse. It found that where older people sought professional help, they were more likely to turn to helping professionals—which is quite understandable—such as GPs and nurses. Notably, of those older people who reported taking action, substantial minorities considered these actions were ineffective. Responses indicating actions were ineffective were highest for financial abuse, at over one-third. This confirms the concern that there is no guarantee that either of the assessing practitioners under the bill—and members know this, too—will adequately identify or respond to the presence or the risk of financial, psychological or physical abuse playing a role in a person's request for a lethal poison to end their life, or the actual ingestion of such a poison if prescribed and supplied for self-administration.

The section of the mandatory reporting regime in Victoria for participating medical practitioners dealing with assessing voluntariness, including the absence of coercion, takes just over five minutes to complete—a five-minute assessment about whether there is coercion. If this does not bring members to tears I do not know what would. This includes a video of two minutes and 20 seconds' duration, and slides that take a further two minutes and 50 seconds to read. If this was not actually true it would be a laughing matter, but it is not. This is reality in Victoria. This is what is proposed for New South Wales.

Given what this latest report on elder abuse confirms about its prevalence and the failure of professionals, including GPs and other health professionals, to adequately identify and respond to it, there are no grounds for assuming that the provisions of the bill as it stands are adequate to prevent wrongful deaths by elder abuse and pressure to request or ingest a lethal poison. Simply repeating the words "choice" and "voluntarism" as a mantra does not change the reality of what we are dealing with here. It does not deal with the substantial risks, of which I have just given members no more than an entree in terms of what I could say. I urge honourable members who, unlike Dr Henry Marsh, do care if a few grannies—in fact, any granny, or their own mother—are bullied into assisted dying to support these amendments.

**The Hon. DAMIEN TUDEHOPE (Minister for Finance, and Minister for Employee Relations) (19:48):** I will speak briefly to the amendments of the Hon. Greg Donnelly. These amendments build upon the provisions of clauses 27 and 38 of the bill, which provide that, in circumstances where the assessing practitioner is unable to decide whether the patient has decision-making capacity in relation to voluntary assisted dying, he or she must refer the patient to a psychiatrist or another registered health practitioner who has appropriate skills and training to make a decision about the matter. Given all the things that the member has just articulated, I submit that including that sort of provision as a mandatory provision—not a voluntary provision—will safeguard against anyone being either bullied or coerced into being part of voluntary assisted dying or euthanasia, as the case may be. Such a provision can be supported because we, as a House, would never want to be complicit in the unwilling death of someone or in circumstances where they are coerced, bullied, depressed or the like. The presence of a qualified psychiatrist in those circumstances is the least we can do in terms of making sure that responsible decision-making is at the heart of the bill. I support the amendments and urge members to do so.

**The Hon. SCOTT FARLOW (19:50):** I have a lot of concern about the power of coercion that can occur with individuals under the bill. In the inquiry into the bill, we heard from many people that they did not believe that the bill, as it stood, could protect people from coercion or that two assessing doctors were capable of determining whether a person was coerced. A feature of the previous voluntary assisted dying bills that we have debated in this place included the assessment by a psychologist. I believe that a psychologist would be in a better position than another practitioner to determine coercion. It is a feature of the law in other jurisdictions where voluntary assisted dying exists. We heard some evidence from supporters of legislation such as this that including an assessment from a psychiatrist was beneficial and could be supported. I implore supporters of the bill to support that feature. It would be an additional safeguard that would give the community a lot more satisfaction with this legislation. I support the amendments.

**The Hon. ADAM SEARLE (19:51):** The co-sponsors of the bill do not support the amendments. They would mandate a psychiatric or psychological assessment to determine a patient's decision-making capacity to make a voluntary assisted dying decision, and whether a patient is acting voluntarily and not because of pressure or duress. If the amendments were passed, referrals on those matters would be restricted to either a psychiatrist, a

clinical psychologist, a clinical neuropsychologist or a forensic psychologist. They would also require the coordinating practitioner and consulting practitioner to automatically adopt the psychiatrist's or psychologist's determination if that determination suggests that the patient is ineligible under those grounds. The framework of the bill is to assist the consulting and coordinating doctors to inform patients' decisions, not to fetter or dictate what those decisions should be.

Mandatory psychological and psychiatric assessments are unnecessary and unhelpful, and would have the effect of blocking access to the regime provided for by the bill. Doctors work with patients to make decisions about their health care, their body and their life every day. They help them make life-changing decisions such as whether to commence chemotherapy or to remove a tumour on a vital organ or to undergo other procedures. They must ensure that patients understand the consequences of their decisions and are fully informed. Doctors have been trained to do that. If we cannot trust doctors to ensure that their patients have the capacity to make those decisions, as this bill would require, and that they are making them voluntarily and without pressure or duress, frankly our whole health system would collapse.

In my view and the view of the co-sponsors, the bill takes an appropriate approach by legislating minimum experience for doctors—10 years—and requiring them to undertake the secretary's training. The bill makes it absolutely clear that if a coordinating practitioner or consulting practitioner is uncertain about decision-making capacity, voluntariness, pressure or duress, they must refer the patient to a psychiatrist or relevant medical practitioner or person. That aspect of the bill was in fact strengthened in the other place by amendments moved by the Hon. Mark Coure, with new requirements for the Health secretary to create guidelines for coordinating and consulting practitioners in making referrals that doctors will have to confirm to the board were complied with. The Hon. Rob Stokes also moved amendments to the bill, which were adopted in the other place. They included training on elder abuse, guidelines on recognising the signs of pressure or duress, and mandatory questions about pressure or duress during medical practitioner assessments.

I make the point that perhaps one benefit of New South Wales coming to this framework now instead of at an earlier time is that we can learn from what other jurisdictions got right and what they did not to ensure that the guidelines and training requirements are the best that we can make them. In the view of the co-sponsors, assessment for decision-making capacity, voluntariness and pressure or duress are more than sufficiently addressed. In addition, the amendments create a situation that is less safe than the current referral obligations when there is uncertainty about the matters because these amendments would remove the flexibility around the professionals that a doctor can refer a patient to by limiting them to psychiatrists and psychologists.

Psychiatrists and psychologists will not always be the appropriate person to refer a patient. Their focus is mental illness; they are not general experts in decision-making capacity or pressure or duress. Some patients would be better assessed by a geriatrician, a neurologist, a psycho-oncologist or a palliative care expert when it comes to their decision-making capacity. If the patient's family is seeing a social worker, the coordinating or consulting practitioner may want to refer them to that social worker for assessment and report. Doctors need the flexibility to use their clinical judgement. Aspects of the bill that force a coordinating or consulting practitioner to adopt an unfavourable determination by a psychiatrist or psychologist are also inappropriate. We expect a high standard from doctors and the onus must be on assessing medical practitioners in this scheme to be satisfied in their own clinical judgement about eligibility criteria.

If a coordinating or consulting practitioner is uncertain that the psychiatrist or psychologist got the assessment right, perhaps because they saw the patient when they were heavily medicated or because new information has come to light from another healthcare professional, that doctor should be able to use their own judgement and potentially refer the patient again. Those amendments will only result in blocked access for people who are dying. Getting an appointment with a psychiatrist or a psychologist will be difficult, with most having long waiting lists. People in rural and regional areas, and people who are bedridden and need a home visit will find it almost impossible. It should be common knowledge that we cannot rely on telehealth because of conflicts with the Commonwealth Criminal Code so those assessments would need to take place in person. That is another potential obstacle that the amendments would unwittingly cause. For those reasons, the co-sponsors recommend that the amendments be rejected.

**The Hon. SCOTT FARLOW (19:57):** I have listened intently to the contribution of the Hon. Adam Searle with respect to the view of the co-sponsors. The terms of flexibility in this legislation or indeed ease of access should be concerning for members in this Chamber. This is a final determination on somebody's life. We want to ensure that safeguards are in place. Safeguards are in place in other jurisdictions and safeguards have been in legislation before this Chamber in the past. Those safeguards do not exist now. Members should be assured that when it comes to an end-of-life decision that every possible check and balance is in place. The amendments moved by the Hon. Greg Donnelly include appropriate checks and balances.

The proponents of the bill have spoken about the guidelines and the improved guidelines due to amendments moved in the other place. Those guidelines were not initially envisaged in this legislation and it is where it falls short. This House should consider those guidelines on the checks and balances and include them in this legislation, which does not provide flexibility or ease of use. We are talking about the final determination of a person's life; the ending of a person's life and every possible check and balance should be in place.

**The CHAIR (The Hon. Wes Fang):** The Hon. Greg Donnelly has moved amendments Nos 8 to 15 on sheet c2022-076C. The question is that the amendments be agreed to.

**The Committee divided.**

Ayes ..... 14  
Noes ..... 23  
Majority..... 9

**AYES**

Amato	Houssos (teller)	Nile
Banasiak	Martin	Poulos
Borsak	Mason-Cox	Rath
Donnelly	Moriarty	Tudehope
Farlow (teller)	Moselmane	

**NOES**

Barrett	Franklin	Primrose
Boyd	Graham	Roberts
Buttigieg (teller)	Higginson	Searle
Cusack	Hurst	Sharpe
D'Adam (teller)	Jackson	Taylor
Faehrmann	Mallard	Veitch
Farraway	Mitchell	Ward
Field	Pearson	

**Amendments negatived.**

**Reverend the Hon. FRED NILE (20:09):** By leave: I move amendments Nos 1 to 4 on sheet c2022-097 in globo:

**No. 1 Certification by administering practitioner following administration of prescribed substance**

Page 28, clause 62(3). Insert after line 40—

- (ea) the period of time that elapsed between the administration of the prescribed substance and the patient's loss of consciousness,

**No. 2 Notification of death**

Page 39, clause 87. Insert after line 14—

- (3A) Without limiting the matters that may be included in the approved form, the approved form must require the following information to be provided in relation to a patient who dies after self-administering a voluntary assisted dying substance under this Act—

- (a) the patient's name and date of birth,
- (b) the coordinating practitioner's name and contact details,
- (c) the date and time the prescribed substance was self-administered,
- (d) the location at which the prescribed substance was self-administered,
- (e) the date and time of the patient's death,
- (f) the period of time that elapsed between the self-administration of the prescribed substance and the patient's loss of consciousness,
- (g) the period of time that elapsed between the self-administration of the prescribed substance and the patient's death,
- (h) details of any complications relating to the self-administration of the prescribed substances,
- (i) the coordinating practitioner's signature and the date the approved form was signed.

**No. 3 Board to record and keep statistical information**

Page 69, clause 170(1). Insert after line 20—

(ba) the matters set out in sections 62(3) and 87(3A),

**No. 4 Annual Report**

Page 70, clause 173(2)(f), lines 15 and 16. Omit "is directed under section 170(2) to include in the report". Insert instead "is required to record and keep under section 170(1)".

Clause 62 (3) outlines one extra detail of data to be collected as part of the already outlined data that is to be collected as part of the practitioner administration form. Clause 87 refers to amendments that would allow the recording of essential basic data that should be collected. The collection of this important information allows more data to enable greater scrutiny as to the operation of the law and the community it affects. It also allows for greater specifications that can be used for academic research.

Clause 170 (1) ensures essential statistical information recorded as part of the practitioner administration form outlined in clause 62 (3), and additional statistics recorded in the notification of death outlined in clause 87 (3), are kept by the board. This guarantees the archiving of vital statistical information that can be accessed by the general public, allowing for data to be evaluated and analysed to track any future effects that voluntary assisted dying and euthanasia causes in our society.

Clause 173 (2) (f) is a minor amendment that guarantees the board is directed to record and keep statistical information about matters relating to voluntary assisted dying. This information includes: (a) the disease, illness or medical condition of a patient that met the requirements of the eligibility criteria, whether or not the patient made a final request—keeping a record of the type of ailment suffered by the patient, combined with their final request, will give insight into the patient's state of mind at the point of death; (b) if a patient has died after self-administering or being administered a voluntary assisted dying substance in accordance with the Act, the age of the patient on the day the patient died—this statistic in particular will reveal if people opting for voluntary assisted dying are getting younger and younger; and (c) participation in the request and assessment process and access to voluntary assisted dying by patients who are regional residents—this data will show whether regional residents are more likely to opt for the voluntary assisted dying option compared with city residents, as palliative care options are more limited in regional areas.

Keeping such records is critical to ensuring transparency in how the law is enacted. Guaranteeing such records are kept means any dangerous trends this new legislation creates can be tracked and corrected when it is next reviewed. The intention of these amendments is to install a series of required data collection and reporting requirements into the bill. Surely my colleagues in this Chamber would like oversight into the application of euthanasia, or is the Legislative Council no longer a house of review? I call upon the Committee to support these amendments.

**The Hon. GREG DONNELLY (20:14):** I will be very quick. I support the enhancement, improvement and refinement of data collection with respect to assisted suicide and euthanasia, described as "voluntary assisted dying" under the bill. One of the great challenges I have failed to come to terms with is—and I am not speaking on behalf of, necessarily, the Hon. Adam Searle and those heavily involved in the bill in New South Wales, but particularly in other States, this is what is going to come to mind—about the reluctance of the collection of data. One can read the reports, and they are now available—obviously they have been for a period of time in Victoria where it has been operational. In Western Australia it has not had its first anniversary of operations so there has only been the occasional report by the Minister in the House about it. There should be nothing stopping the collection of data that can be properly collated, interrogated and, importantly, fed back to the Parliament, which initiates these laws for careful study and review. That might lead to changes in the way the law ultimately operates in terms of perhaps even amendments in due course if there are matters there that need that attention. I support the enhancement of the proposal to improve the data collection and reporting.

**The Hon. ADAM SEARLE (20:15):** The co-sponsors of the bill do not support the amendments. They are overly prescriptive, cumbersome and provide no value to an already highly regulated field that has more oversight and transparency than any other medical option available. The first amendment would require an administering practitioner to report on the period of time that elapses between the administration of the prescribed substance and the patient's loss of consciousness. The bill already requires the administering practitioner to report to the board the time between the administration of the substance and death. The second amendment prescribes the matters on the form that the coordinating practitioner or the administering practitioner give to the board to notify of the patient's death. The list is highly prescriptive and not needed in legislation. There will likely be a portal that will cover much of this information and it is up to the board to determine what information is useful upon the death of the patient.

The third amendment requires publication of a large range of data surrounding the death and the administration of the substance. The Legislative Assembly already debated and defeated amendments that sought

to set out very detailed reporting obligations on the board. In response it was stressed that the Minister for Health has broad powers to direct the board to publish data and the Minister assured members that he is consulting with other States about this very matter to ensure that New South Wales is able to collect the right data to respond to any or all relevant issues. He expressed support for a flexible approach over a prescriptive approach in the bill, as is used by other States.

Notwithstanding the views expressed by the Minister for Health in that debate, I agree that the Parliament should direct the board to collect and publish some level of data around the administration of the substance in addition to other matters, and I have lodged and circulated amendments that I will move to that effect. They will set out the minimum that I believe any Parliament would expect an accountable board to report on. In any case, that information would ordinarily be collected and reported on. While the co-sponsors of the bill see the amendments as an overreach, I hope the Committee can agree to the additional amendments I will subsequently move for minimum data collection and publication.

**The CHAIR (The Hon. Wes Fang):** Reverend the Hon. Fred Nile has moved amendments Nos 1 to 4 on sheet c2022-097 in globo. The question is that the amendments be agreed to.

**Amendments negatived.**

**The Hon. GREG DONNELLY (20:20):** I move amendment No. 1 on sheet c2022-075F:

**No. 1 Eligibility criteria—diagnosis**

Page 6, clause 16 (1) (d), line 34. Insert, "by a medical practitioner with relevant specialist registration," after "diagnosed".

The matter of the involvement, or perhaps rather the non-involvement, of a specialist in this whole New South Wales model of voluntary assisted dying is in my respect a matter of enormous concern. I take the view, quite frankly, if it is good enough for my cousins in Victoria—and I have quite a few cousins in Victoria—to be covered by a VAD scheme whereby the process provides for specialist involvement because it was deemed by the Parliament at the time—quite deliberately built into the Act there, not that long ago—that a specialist was critical to providing fundamental information, advice and consideration around what is exercising the person's mind about potentially going down the path to end their life through assisted suicide or euthanasia, why is that not to be the situation here in New South Wales?

I have not gone down the path of trying to place directly into the bill a Victorian-style provision, which is building that into one of the treating doctors. I have approached it another way and invited the House to consider my proposal. The amendment would insert into clause 16 (1) (d) after the word "diagnosed" the words:

... by a medical practitioner with relevant specialist registration.

This amendment would simply clarify what the Hon. Adam Searle and other supporters of the bill have presented to the House as the way the bill is expected to operate. Members will recall last Wednesday when we were considering this that the Hon. Adam Searle, having completed his second reading speech, referred in reply to the fact that specialists are typically and normally involved. Indeed, the Hon. Adam Searle specifically claimed in his address that the person would:

... have already seen a range of specialists and doctors, and have extensive files identifying their clinical status, diagnosis and prognosis.

That is what he said, and he will appreciate that. This is done. The specialists are involved. It has been conceded that that is the case. If that is the case, and it is generally understood that that is the case, let us find a way of building it into the bill that does not offend the proponents by locking it into the way described à la the Victorian provision of being either the first or the second of the two doctors. I have tried to address it differently, but nevertheless deal with the reality that is being in fact put to the Parliament.

The problem is that nothing in the bill as it stands ensures the situation about the specialists. The amendment I propose would remedy this defect. It would not add another procedural step to the bill, and that is not my intention, but simply clarify the assumptions on which the Hon. Adam Searle and others who are supporting the bill have ventilated both inside Parliament and elsewhere. Otherwise, the bill could allow a person to proceed right through each stage of the assessment process and have their life ended unnecessarily as a result of a misdiagnosis made by the coordinating practitioner or the consulting practitioner, neither of whom is required to have any relevant specialist registration.

Supporters of the bill should not dismiss this amendment as hostile or as seeking to place roadblocks in front of an individual who intends freely, consciously and deliberately and who meets eligibility, and all that is provided for in the legislation we were debating earlier today, to proceed down that path. The proposal I put forward is genuinely aimed at ensuring the bill does what the proponents claim it does: That it only allows access for those who actually have a terminal illness that will cause death in six or 12 months. If that is the case, surely

this modest amendment, which is trying to improve and enhance this capacity of ensuring a person does not make what could be seen as the most profoundly disastrous misstep of their life, and that is to go down a path when in fact they do not actually have the condition.

I will conclude on this note: The evidence we actually had, once again from the inquiry, from particularly specialists from various colleges—be they geriatricians, be they palliative care specialists or be they specialists in a range of other specialties in medicine—both men and women, said with the greatest respect to their colleagues, that is, the general practitioners, that they do not actually have the training, the skills, the knowledge to be able to make a determination, as they are able to do as trained specialists, with respect to the diagnosis and the prognosis of the individual. It would be utterly appalling to contemplate that there be this lacuna in the bill, this gap, whereby there is not at least some specialist participation built in, albeit in a different way from Victoria, to ensure that that horrible situation never comes to pass.

**The Hon. ADAM SEARLE (20:27):** The co-sponsors of the bill do not support this amendment. The amendment would mandate that a patient's diagnosis was made by a specialist in the patient's condition. There is no need for this. Most people at the end stage of a terminal illness with a very dire prognosis have already, as the Hon. Greg Donnelly quoted me from my reply speech, seen a range of specialists and doctors and have extensive files identifying their diagnosis as well as clinical status and prognosis. In many conditions, GPs are more than capable of determining diagnosis based on diagnostic tests like X-rays, ultrasounds and CT scans. They do this all the time.

If a patient is at the very end of their life—and we know from experience in Victoria that patients often do not seek voluntary assisted dying until they have much less time than six months to live—they are often not wanting to face what is ahead of them. This amendment would simply put up an additional barrier when two experienced doctors, the consulting and coordinating doctors, are independently satisfied that the patient has a terminal diagnosis and meets the conditions of the bill. Of course, it is those two doctors who will have to have more than 10 years experience and will have to have fulfilled the other specialist mandatory training required by the Health Secretary.

It is also clear in the bill that if either doctor is not certain about a diagnosis, they must refer the patient to a relevant specialist. That is appropriate and ensures that the specialist expertise is accessed when required. These provisions were strengthened in the debate in the other place by the Hon. Mark Coure, whose amendment will ensure that there will be guidelines for coordinating and consulting practitioners in referring patients to specialists, with the practitioners required to confirm to the board that the guidelines were followed. The bill, in its current form, rightly places the onus on the coordinating practitioner and the consulting practitioner to use their clinical judgement to be personally satisfied about a patient's diagnosis, and indeed all the matters laid down in clause 16. The co-sponsors of the bill do not support this amendment.

**Ms CATE FAEHRMANN (20:29):** I speak against this amendment as a member of the very recently completed inquiry into regional, rural and remote health. This amendment would severely disadvantage patients in rural and remote New South Wales seeking access under this law. I note that the Hon. Greg Donnelly was chair of that inquiry. At pretty much every hearing in remote and rural areas we heard, time and time again, just how bad the situation is regarding access to specialists, how expensive it is and what the waiting times are. We heard that there are no specialists available in rural and remote New South Wales, so trips to Sydney are often required. To include something in this bill that requires people to be diagnosed specifically by a specialist cuts out so many of those families and people who are pleading with us to make access to health services easier for them. This goes the other way.

**The Hon. GREG DONNELLY (20:31):** I think we had better get used to it. If the bill passes, this will be considered a health service. Offering our citizens assisted suicide or euthanasia will be talked about as a health service. I think we should just get our minds around that. I did not think it would ever come to the day when that language would be used in New South Wales. But, let us be clear, we are talking about a health service—or health care, in fact, as the honourable member said.

On the issue of the specialists, I completely refute the proposition in response by the Hon. Adam Searle about the position with respect to GPs. First of all, the GPs, under this proposal, are under no obligation to pick up the phone and talk to a person's treating GP to obtain any information whatsoever about that person. In other words, a person could walk through the door of the local medical clinic, front the doctor and the doctor could then commence the process without accessing any information whatsoever about the person's history or condition or anything. Starting with a blank sheet of paper—that is what we are talking about.

I just find it extraordinary. The repository of all the information about that person—every aspect, including what may or may not be their condition—is held on their medical record by their GP. But under this bill there is no obligation to consult with the treating GP or the usual GP. So the whole process sort of gets underway. With



regard to independence, there has been a lot of talk. With the greatest respect, these GPs can be working in the same medical clinic. They can, in fact, have their offices next door to each other. A person comes in and sees one GP, who is the consulting GP, and guess what? The coordinating GP is next door. That is what this legislation provides for. That is the independence—Chinese walls. We talk about Chinese walls being considered good enough to ensure that individuals in this State do not go down the path of voluntary assisted suicide and euthanasia. I just find that an extraordinary proposition.

**The CHAIR (The Hon. Wes Fang):** The Hon. Greg Donnelly has moved amendment No. 1 on sheet c2022-075F. The question is that the amendment be agreed to.

**The Committee divided.**

Ayes ..... 13  
Noes ..... 23  
Majority ..... 10

**AYES**

Amato	Houssos (teller)	Moselmane
Banasiak	Martin	Nile
Borsak	Mason-Cox	Rath
Donnelly	Moriarty	Tudehope
Farlow (teller)		

**NOES**

Barrett	Franklin	Primrose
Boyd	Graham	Roberts
Buttigieg (teller)	Higginson	Searle
Cusack	Hurst	Sharpe
D'Adam (teller)	Jackson	Taylor
Faehrmann	Mallard	Veitch
Faraway	Mitchell	Ward
Field	Pearson	

**Amendment negatived.**

**The Hon. GREG DONNELLY (20:44):** By leave: I move amendments Nos 2, 8 and 9 on sheet c2022-075F in globo:

**No. 2 Eligibility criteria—cause of death**

Page 6, clause 16(1)(d)(ii), line 37. Omit "on the balance of probabilities". Insert instead "to a high degree of certainty based on reasonable medical opinion".

**No. 8 Referral to another medical practitioner for opinion—period to death**

Page 10, clause 26(3)(a)(ii), line 36. Omit "on the balance of probabilities". Insert instead "to a high degree of certainty based on reasonable medical opinion".

**No. 9 Referral to another medical practitioner for opinion—period to death**

Page 16, clause 37(3)(a)(ii), line 28. Omit "on the balance of probabilities". Insert instead "to a high degree of certainty based on reasonable medical opinion".

Clauses 16, 26 and 37 of the bill each refer to the level of certainty required in regard to the prognosis of a person who is diagnosed with at least one disease, illness or medical condition that is advanced, aggressive and will cause death. The level of certainty set out in the bill is one that members are familiar with. Whether legally trained or not, members would have an understanding of the notion of the balance of probabilities. Clause 16 (1) (d) (ii) of the bill provides that a person is eligible if the person has a disease, illness or medical condition that:

- (ii) will, on the balance of probabilities, cause death—
  - (A) for a disease, illness or medical condition that is neurodegenerative—within a period of 12 months, or
  - (B) otherwise—within a period of 6 months ...

The phrase "on the balance of probabilities" is not used in the medical literature in relation to the degree of certainty of prognosis. In fact, it is essentially alien to medical science. It is a term from the very different arena of legal practice. I know a number of members of this Parliament were barristers or solicitors in their past lives,

and they would understand the phrase quite intimately. But in law it is a very different issue compared to medical science. On the face of it, the balance of probabilities could equate to 50 per cent plus one or higher. I am not going to make a big song and dance about 51 per cent. That is an argument that has been used to try to shake the tree. But I am simply making the point that it is essentially 50-50, or the toss of a coin.

Surely members will agree that it is unacceptable for the State to authorise the death of a person who may be using that calculation—if it can be described that way—of a 49 per cent chance of outliving a prognosis of six months or, in some cases, 12 months to live. The amendment proposes replacing that non-medical term with a more familiar reference point for medical practitioners. The proposed phraseology is "to a high degree of certainty based on reasonable medical opinion". In addition to changing the eligibility criteria in clause 16, the amendments make the same change to clauses 26 and 37, which deal with the decision to be made by a medical practitioner "who has appropriate skills and training to make a decision about the matter". The term "matter" referred to in these clauses includes whether the person will die within the six- or 12-month time frame. The appropriate standard for such a decision, which is a life-ending decision, cannot just be left on that balance of probability. There needs to be a higher bar—a higher threshold—with a high degree of certainty based on reasonable medical opinion.

I draw members' attention to the fact that the Hon. Alister Henskens in the other place spent some time dealing with this matter. I will make this particular reflection. I am sure members know him. They can talk to him directly about this on another occasion. But he quite specifically referred to the High Court decision of *Briginshaw v Briginshaw*—which I am sure honourable members who were barristers and lawyers in a past life understand—and the setting of a much higher bar and the need to understand that, certainly and obviously, when that decision was decided, it reflected on how it looks vis-a-vis the balance of probabilities and beyond reasonable doubt. That *Briginshaw v Briginshaw* decision articulates that there can be and are, in fact, matters that deserve and require a discernment that places them in an area—and they do not say this in the judgement—as a third limb of a judgement about whether it is balance of probabilities, somewhere in between or beyond reasonable doubt, but that in fact there is something there beyond the balance of probabilities that ought to be exercised as a judgement in certain matters. I will leave my comments there.

**The Hon. ADAM SEARLE (20:51):** The co-sponsors of the bill do not support this amendment. The balance of probability test is well understood in Australian terminology. It is used in other Australian voluntary assisted dying laws and it is well understood by doctors and, indeed, by lawyers and the courts. To satisfy the balance of probabilities test, it is not simply the case that something is marginally more likely to occur than not. In fact, the case of *Briginshaw* is a very good example of this because it is often cited as proposition for the balance of probabilities being 50 per cent or 51 per cent satisfaction but, in fact, it is not. Their Honours were very careful to say that it is not a single standard of proof. It is a shifting standard of proof that gets higher and steeper depending on the seriousness of the consequences of the decision to be made. So in the case of the current matters that we are discussing—end of life—there is a very high degree of satisfaction that is required of a decision-maker or of someone making a determination on the balance of probabilities. It is not simply the case that the current situation in the bill requires, to paraphrase the mover of the amendment, essentially a fifty-fifty proposition.

**The Hon. Greg Donnelly:** That is not what I said. In fact, I said quite the opposite.

**The Hon. ADAM SEARLE:** Okay, I apologise. In any case, it requires a very comfortable level of satisfaction of the doctors to be involved in making this assessment laid down in clause 16. As I said, it is a terminology well understood in the law. It is also well understood in medical practice, and doctors do not make these diagnoses or reach these conclusions lightly, particularly given the gravity of the consequences that could flow from them. This test as laid down in the bill is used by medical practitioners in providing reports to insurers and compensation authorities and, as I have said, it is in operation in other voluntary assisted dying regimes around the country. Those assessments are not mathematically precise down to the last dot point, but doctors bring all of their training, learning and experience—as well as the experience of their colleagues—to reaching those conclusions. Because of the very high degree of satisfaction required, they would not reach them lightly.

In fact, the experience in Victoria has been that doctors are very reluctant to give a six-month prognosis until a person is very close to death, is deteriorating rapidly and sometimes has very little time. The co-sponsors of the bill are of the view that the amendments would insert a higher threshold than is currently used in medical practice in New South Wales and other like regimes in other jurisdictions. In our view, that is not appropriate and would operate to exclude access for those who would otherwise be eligible to access voluntary assisted dying given the way in which the bill is currently framed. For those reasons, the Opposition urges the Committee to reject the amendments.

**The CHAIR (The Hon. Wes Fang):** The Hon. Greg Donnelly has moved amendments Nos 2, 8 and 9 on sheet c2022-075F in globo. The question is that the amendments be agreed to.

**The Committee divided.**

Ayes ..... 12  
 Noes ..... 23  
 Majority ..... 11

**AYES**

Amato	Farlow (teller)	Moriarty
Banasiak	Houssos (teller)	Moselmane
Borsak	Martin	Rath
Donnelly	Mason-Cox	Tudehope

**NOES**

Barrett	Franklin	Primrose
Boyd	Graham	Roberts
Buttigieg (teller)	Higginson	Searle
Cusack	Hurst	Sharpe
D'Adam (teller)	Jackson	Taylor
Faehrmann	Mallard	Veitch
Faraway	Mitchell	Ward
Field	Pearson	

**Amendments negatived.**

**The Hon. GREG DONNELLY (21:06):** I move my amendment No. 3 on sheet c2022-075F:

**No. 3 Eligibility criteria—suffering**

Page 6, clause 16(1)(d)(iii), line 44. Omit "suffering". Insert instead "pain or other physical symptoms".

The amendment replaces the undefined term "suffering", which is terminology in clause 16 (1) (d) (iii) of the bill, with what is—in my judgement, and I think the judgement of many who have looked at this, particularly from a medico-legal point of view—the more precise term "pain or other physical symptoms". Mr Greenwich, the lead proponent of the legislation, in his second reading speech in the other place, referred to:

... people who are in the final stages of a terminal illness and who are experiencing cruel suffering that cannot be relieved by treatment or palliative care—

and who are faced only with "a slow and agonising death". This language certainly conjures up the image of a person in extreme pain or other extreme physical duress. However, the unqualified and undefined term "suffering"—and once again I invite members to look at the dictionary; they will find nothing in there for the definition—casts the net much wider than people in such a condition. In other jurisdictions, the suffering required to qualify a person for assistance to die through euthanasia or assisted suicide has been interpreted very broadly to include not just suffering from pain or other distressing physical symptoms but also suffering from a person's social and family situation. I think that is a great danger of this legislation. Feeling like a burden to others—and we talked about that report by the Australian Institute of Family Studies—or no longer being able to engage in enjoyable life activities, and feeling lonely and socially isolated, have all been accepted as sufficient grounds of suffering. If the term "suffering" is left unqualified and unamended then those same outcomes can and will play out in New South Wales. That is tragically a most undesirable outcome.

**The Hon. ADAM SEARLE (21:09):** The co-sponsors of the bill strongly oppose the amendment and recommend that members also oppose it. The bill in the current form aims to capture the holistic, multifaceted and intensely personal experience of suffering in its variety of forms, including but not limited to pain and physical symptoms. Suffering is also a psychological experience that involves many factors, including someone's ability to cope and their fears. It can involve loss of dignity and autonomy, extreme fatigue and fears for the future. The amendment will try to force doctors to dissect the experience of a person who has a terminal condition to determine whether the pain and physical symptoms alone are intolerable, while not taking into account psychological, emotional and existential factors.

That is an archaic approach that has no currency in modern medicine, palliative care or the human experience. It would block access to voluntary assisted dying for people who have a terminal condition and are suffering and afraid of their death but whose pain and physical symptoms do not kick in or creep up on them until they are too incapacitated to go through the rigorous process provided for in the legislation. No voluntary assisted dying regime in the world limits access to pain and physical symptoms. That is illogical. It is inconsistent with

palliative care's holistic approach to suffering, which incorporates physical, emotional, spiritual, social and existential suffering. The whole point of the bill is to give people experiencing what they judge to be intolerable suffering as the result of their terminal condition—let us not forget that they must have a terminal condition—a safe and legal option to end that suffering when they determine they can no longer take it. The co-sponsors recommend rejection of the amendment.

**The Hon. DAMIEN TUDEHOPE (Minister for Finance, and Minister for Employee Relations) (21:11):** This amendment is designed to address exactly the issue that the proponents of the bill do not want to address—that is, the problem of the slippery slope. The notion of suffering as outlined by the Hon. Adam Searle is exactly the commencement of the slippery slope that is designed to catch people who would not normally have been the objects of the definition of "intolerable pain", which was the initial stance that was the impetus for the bill. The problem with allowing people to make their own assessment about pain heightens the problem with the suggestion of the difficulty that a person has in their life. There is no objective standard to measure the pain against. The amendment is designed to address that.

In those circumstance there is the amorphous notion that "My pain is my pain and you can't determine what my pain is. My pain is intolerable for me. In those circumstances, I should be entitled to avail myself of voluntary assisted dying as promulgated in the bill." The amendment is designed principally to ensure that that circumstance does not arise and that there is an objective standard that those who are assessing an individual patient must address for the purposes of delivering the outcome of the bill. While I respect the holistic notion of suffering that supporters of the bill have identified—and I think probably in terms of modern medicine that may well be an appropriate holistic approach—the amendment is designed to give rise to a circumstance where, because of the seriousness of the outcome, there ought be some objective test applied to the making of the determination.

**The CHAIR (The Hon. Wes Fang):** The Hon. Greg Donnelly has moved amendment No. 3 on sheet c2022-075F. The question is that the amendment be agreed to.

**The Committee divided.**

Ayes .....12  
Noes .....22  
Majority.....10

**AYES**

Amato	Farlow (teller)	Moriarty
Banasiak	Houssos (teller)	Moselmane
Borsak	Martin	Poulos
Donnelly	Mason-Cox	Tudehope

**NOES**

Barrett	Franklin	Primrose
Boyd	Graham	Roberts
Buttigieg (teller)	Higginson	Searle
Cusack	Hurst	Sharpe
D'Adam (teller)	Mallard	Taylor
Faehrmann	Mitchell	Veitch
Farraway	Pearson	Ward
Field		

**Amendment negatived.**

**The Hon. GREG DONNELLY (21:24):** I move amendment No. 4 on sheet c2022-075F:

No. 4 **Eligibility criteria—period to death**

Page 6, clause 16(1)(d)(iii), line 44. Insert ", after consultation with a specialist palliative medicine physician," after "that".

This amendment would amend clause 16 (1) (d) (iii) to read "is causing suffering to the person that, after consultation with a specialist palliative medicine physician, cannot be relieved in a way the person considers tolerable". The amendment does not intend to add another step in the procedures and the processes in the legislation; it would simply help to ensure that no person prematurely concluded that their suffering cannot be relieved in a way the person considers tolerable. The bill as amended in the Legislative Assembly now incorporates two principles which relate to this amendment. First, clause 4 (1) of the bill requires that "A person

exercising a power or performing a function under this Act must have regard to" the principles set out in that clause. Then clause 4 (1) (d) provides:

a person approaching the end of life should be provided with high quality care and treatment, including palliative care and treatment, to minimise the person's suffering and maximise the person's quality of life ...

High-quality palliative care and treatment, especially in the context where a person is experiencing or fears that they will experience intolerable suffering, must include a consultation with a specialist palliative medicine physician. Other health professionals may be able to provide palliative care and treatment in many circumstances. However, before concluding, in effect, that palliative care cannot help, surely a person ought to have tested this to completion through a consultation with an expert. The committee inquiring into the bill heard in evidence, time and time again, examples of people who thought that there was no hope of relief until given such expert palliative care advice. Clause 4 (1) (i) of the bill provides:

a person who is a regional resident is entitled to the same level of access to voluntary assisted dying and high quality care and treatment, including palliative care and treatment, as a person who lives in a metropolitan region ...

In having regard to this principle, it would be essential not to proceed to find a person eligible for access under the bill if, due to living in a region, they have not had the same level of access to high-quality palliative care and treatment as a person who lives in a metropolitan area. This is my great fear of this legislation. So before proceeding to conclude that the person suffering could be relieved in a way the person considers tolerable, the entitlement to equal access to high-quality palliative care and treatment would need to be facilitated through consultation with the only person who can actually do this, and that is a specialist palliative care physician. I commend the amendment to the Committee.

**The Hon. ADAM SEARLE (21:28):** The co-sponsors of the bill do not support the amendment. Firstly, forcing a patient to see a palliative care specialist in order to access voluntary assisted dying is, in my view—and, I think, in the view of the bill's sponsors—disturbing and contrary to patient autonomy. Secondly, not all patients would benefit from specialist palliative care as referred to in the amendment, and the bill already requires two experienced medical practitioners to inform patients about their options. Patients will, and should, be able to make their own decisions about whether they want to seek further advice about specialist care. The key here, to my way of thinking, is that because a lot of people do not want to die but would seek voluntary assisted dying at a time when they believe that their suffering is not tolerable to them, or their quality of life is not what they would want it to be, it would often be at a stage in the progression of their condition or illness where time is very short, again creating, if you like—

**The Hon. Greg Donnelly:** Obstacle.

**The Hon. ADAM SEARLE:** A barrier.

**The Hon. Greg Donnelly:** Your words.

**The Hon. ADAM SEARLE:** These are my words—a barrier to access voluntary assisted dying to include that requirement that they must seek a consultation with a specialist palliative care medicine physician. Again, I am not saying this is the intention, but the way the amendment is drafted and the way it would be grafted on could possibly also be interpreted as requiring a palliative care specialist to form a judgement about whether the suffering was intolerable. That is not the only conclusion you could draw from the way in which it is drafted, but it is a meaning that would be open should the amendment become part of the bill. It would be totally contrary to the essence of the bill, which is all about patient choice and autonomy, to have a specialist third party determine whether a patient's level of suffering was tolerable or not. That would be totally contrary to the essence of the legislation and the framework.

Suffering is a very personal, emotional and psychological experience. Different people have different thresholds to what they can tolerate. It should be for them to decide whether they wish to seek specialist palliative care and whether they feel that would provide them with benefits. The information from other jurisdictions is that at the time of seeking access to voluntary assisted dying the vast majority of people would have sought access to palliative care or specialist palliative care. But to mandate it in this way would not be appropriate, would not meet the needs of all patients and would put in place a potential obstacle for a person seeking access to voluntary assisted dying in circumstances where palliative care may not be for them and may not provide the benefits that they need at that point in time. The co-sponsors recommend that the amendment not be supported.

**The Hon. DAMIEN TUDEHOPE (Minister for Finance, and Minister for Employee Relations) (21:32):** The whole bill impacts the autonomy of decision-making of an individual. The bill puts in place a whole process of steps that patients are required to go through to reach the final conclusion of where they want to be in relation to the bill. The introduction of a step or a condition is nothing new to the bill because of the way that it is drafted—and I cast no reflection on the drafters of the bill because, in many respects, they are doing the best they

can. They probably have sought to create a circumstance where they get the patient seeking voluntary assisted dying through a fair few hoops to get there. Why would they not embrace this amendment?

They say that "the person is diagnosed with at least one disease, illness or medical condition", and then there are a number of conditions—they have to go through those conditions—then we get to the provision that states the person's medical condition "is causing suffering to the person that cannot be relieved in a way that the person considers tolerable". How do I know that my pain cannot be relieved or that there are not other treatment options available to me in circumstances where I may have got through clause 16 (d) (i) and (ii) but there may be other ways of dealing with it by which I can extend my life for a longer period of time, spend it with my family and have potential quality of life for that period of time which is afforded by palliative care? Yet, notwithstanding all the other prescriptive requirements of the bill, we do not embrace that one.

In my view that is where it gets very tricky for the protagonists of the bill because what they are saying is, "The end that we want people to get to is not going to be confined by a circumstance where they might get something that would, in fact, suggest to them that they do not go down this route." That is the problem with it. In many respects that is why we should embrace this amendment, and with some bona fides on the part of the drafters of the bill they ought to say, "Well, we want to make sure that all options were explored by the patient before they took this step." Having a palliative care specialist available, at least to give some advice about whether the condition can be treated otherwise than by death, is a worthwhile amendment to the bill.

I understand the argument about a step that is introduced that may not be available to regional people or if palliative care specialists may not be readily available when people have formed the view that their suffering is intolerable and they want some sort of immediacy about the program. I accept that it is right; I do not think that we do enough about palliative care in regional areas. There is a massive obligation on governments to do more about palliative care. But that is the way to deal with that, not to neglect to make it a condition of the bill. The obligation should be for governments to do a lot more to make palliative care services available.

**The Hon. COURTNEY HOUSSOS (21:36):** I make some brief comments on the amendment about palliative care consultation. I listened carefully to the arguments put by the Hon. Adam Searle and I too agree with the Leader of the Government that whilst the bill is about patient choice and autonomy, the very role of this place is to put safeguards and checks on the bill. It is appropriate that before someone takes that very significant step to end their life that they are provided with every medical option available. I do not think it is unreasonable to require that person to receive specialised palliative care before they take that step.

From a regional perspective, we certainly do not want to see people going down the voluntary assisted dying route because there is no palliative care option. That would be absolutely heartbreaking and the Government fundamentally letting down the people of regional New South Wales. This is another step to protect and advise people. We know this is a very, very difficult time and there is an immense amount of pain and suffering that would take someone on this journey. But I do not think it is unreasonable that they should be given the best medical advice about the alternatives to taking that final step. We as a House need to think about that very carefully before voting down a very sensible amendment. I commend the amendment to the House.

**Ms CATE FAEHRMANN (21:38):** I speak against the amendment moved by the Hon. Greg Donnelly. I stress to members in this place that the subjects of this law—ultimately hopefully when passed—are really those people who often cannot be helped by palliative care. I mention again a couple of the stories that I raised in my second reading contribution on the bill. They are stories of loved ones who have died from horrendous cancers whose pain could not be alleviated by palliative care.

I note the contribution by the Leader of the Government that maybe palliative care could ensure that somebody was able to have their pain alleviated; maybe there was an alternative, according to the Hon. Courtney Houssos, for the pain that they are experiencing. That is not the case for people who are suffering from mesothelioma. Palliative care cannot relieve the intense suffering that people experience who are dying from mesothelioma. We have heard of their screams, their shrieks for days, and loved ones saying how terrifying it was in terms of the pain that they went through. I am thinking of people who have talked to me about the stories of their loved ones who died. Cathy Barry is one. I know she is watching this debate tonight. Cathy's brother, Tom, had a horrendous facial cancer. Palliative care was going to do nothing for Tom's pain and suffering. I think of Jayde Britton, whose partner spoke so bravely about what Jayde went through with ovarian cancer; the tumours that were eating her body and breaking her vertebrae. Palliative care was not going to do anything for Jayde.

I think of Loredana Alessio-Mulhall, who had multiple sclerosis for many, many years and who eventually died. Palliative care was not going to do anything for Loredana either. I think of some of the people I have met with and who have now passed away suffering from motor neurone disease. Palliative care was going to do nothing for them either. This law will not be accessed by everybody who gets a terminal illness. Of course not! Most people will die from that terminal illness, probably naturally. They are the facts. But this is for those people whose

intense pain and suffering, from all of the conditions I have mentioned, and quite a few more that palliative care has no hope in hell of ever alleviating their pain in the last day, the last week or the last month.

I have to say once again that in accessing specialist palliative care after being on the health outcomes and access to health and hospital services in rural, regional and remote New South Wales inquiry, the thought of someone with an advanced facial tumour, for example, in, let us say Broken Hill, accessing specialist palliative care in the final couple of months of that horrendous disease is just completely irrational. Obviously, I do not support the amendment. Honestly, this goes to the very crux of this bill, which is that palliative care cannot and will not ever support these handful of patients—sometimes more, yes we know—who are suffering so terribly from these illnesses. That is who this is for. Palliative care cannot help them.

**The CHAIR (The Hon. Wes Fang):** The Hon. Greg Donnelly has moved amendment No. 4 on sheet c2022-075F. The question is that the amendment be agreed to.

**The Committee divided.**

Ayes ..... 12  
Noes ..... 22  
Majority ..... 10

**AYES**

Amato	Farlow (teller)	Moriarty
Banasiak	Houssos (teller)	Moselmane
Borsak	Martin	Poulos
Donnelly	Mason-Cox	Tudehope

**NOES**

Barrett	Franklin	Primrose
Boyd	Graham	Roberts
Buttigieg (teller)	Higginson	Searle
Cusack	Hurst	Sharpe
D'Adam (teller)	Mallard	Taylor
Faehrmann	Mitchell	Veitch
Farraway	Pearson	Ward
Field		

**Amendment negatived.**

**The Hon. GREG DONNELLY (21:52):** I move my amendment No. 5 on sheet c2022-075F:

**No. 5 Eligibility criteria—not at the suggestion of others**

Page 7, clause 16(1). Insert after line 5—

(ga) the person is acting on the person's own initiative and not at the suggestion or urging of another person,

This amendment would add to the eligibility criteria in clause 16 (1) about which the coordinating and the consulting practitioners must satisfy themselves of the criterion that "the person is acting on the person's own initiative and not at the suggesting or urging of other persons". If access under the bill to a life-ending situation of assistance to suicide or euthanasia is to be truly voluntary and the proponents of the legislation continue to say that that is their intention—and, in fact, that is the only outcome that this bill can possibly produce, and that is the position I continue to assert even this evening—the idea should be the initiative of the person, not planted in their mind or suggested by another person and not acted on or after repeated urgings by another person. The amendment would require the assessing practitioner to turn their mind to this possibility, to consider this. The inquiry heard plenty of evidence in regard to that, including documented case study examples from Victoria about suggestions being made to people and about people, in fact, succumbing to voluntary assisted dying in that State. It is happening right now in Victoria. I commend the amendment to the Committee.

**The Hon. ADAM SEARLE (21:54):** As I understand it, the Legislative Assembly rejected an amendment with the same effect as this amendment. The co-sponsors of the bill recommend that the members of this Committee do the same. In many respects, the addition of proposed subparagraph (ga) to the eligibility criteria in clause 16 (1) would extend the conversation that we had earlier about healthcare workers not initiating discussions. The amendment proposes that same issue from a different angle but is not limited to healthcare

workers. As an additional eligibility criteria, the amendment would require the patient to be acting on their own initiative. I understand the drafting to mean that patients who have had someone—a loved one who knows the patient is suicidal or experiencing severe distress about their situation—who has tried to explain to them all the options they might have available to them, including voluntary assisted dying, could, by having had that conversation, make the patient ineligible to access voluntary assisted dying. That would be a very heavy outcome, and one that is not warranted.

The bill already includes strong safeguards against pressure or duress. Patients will be assessed by two experienced doctors to determine if they are acting voluntarily and without pressure or duress. Those doctors will be trained. They will be required to be experienced. Thanks to the amendments of the Hon. Rob Stokes in the other place, they will also have guidelines on how to detect signs of pressure or duress. The member for Pittwater's amendments will also add new mandatory information requirements and questions to patients about coercion. Given that those things are already in the bill, having an additional eligibility criterion that a person cannot have had these discussions would undermine the framework provided for in the bill. On behalf of the other co-sponsors of the bill, we recommend that the amendment not be adopted by this Committee.

**The Hon. GREG DONNELLY (21:57):** The honourable member referred to "discussions". We are talking about suggestions. We are talking about putting in a person's mind a consideration that they may never have had and may, in fact, never have about ending their life.

**The Hon. DAMIEN TUDEHOPE (Minister for Finance, and Minister for Employee Relations) (21:57):** I note that proposed subparagraph (ga) is a subset of the notion of not acting because of pressure or duress. Of course, one way of looking at that is that forming a view that the person is acting on their own initiative, and not at the suggestion or urging of another person, is probably a subset of pressure or duress, which the consulting doctor must take into account for the purposes of forming a view as to whether that person is under significant duress for the purposes of making the decision. I would have thought this was a very simple approach.

Effectively, it is almost a questionnaire: Are you doing this yourself? Are other people suggesting it to you? Is it something that you have come to of your own free will? We have all been party to exactly those sorts of questionnaires in other aspects of our lives when we are asked, "Are you doing this on your own initiative?" Asking a doctor to satisfy himself that the patient that he is seeing is acting on his own initiative is not overly onerous and does not overtax the notion of the bill. The doctor has to take into account whether there is pressure or duress. A subset that requires the doctor to ask questions about the patient acting on their own initiative does not appear to me to be an overly onerous provision to place on them.

**The CHAIR (The Hon. Wes Fang):** According to sessional order, it being 10.00 p.m., does the Minister require that I report progress to allow the motion for the adjournment to be moved?

**The Hon. DAMIEN TUDEHOPE:** No.

**The Committee continued to sit.**

**The CHAIR (The Hon. Wes Fang):** The Hon. Greg Donnelly has moved amendment No. 5 on sheet c2022-075F. The question is that the amendment be agreed to.

**The Committee divided.**

Ayes .....12  
Noes .....23  
Majority.....11

#### AYES

Amato  
Banasiak  
Borsak  
Donnelly

Farlow (teller)  
Houssos (teller)  
Martin  
Mason-Cox

Moriarty  
Moselmane  
Poulos  
Tudehope

#### NOES

Barrett  
Boyd  
Buttigieg (teller)  
Cusack  
D'Adam (teller)  
Faehrmann

Franklin  
Graham  
Higginson  
Hurst  
Jackson  
Mallard

Primrose  
Roberts  
Searle  
Sharpe  
Taylor  
Veitch



## NOES

Farraway  
FieldMitchell  
Pearson

Ward

**Amendment negatived.**

**The Hon. GREG DONNELLY (22:10):** By leave: I move my amendments Nos 6 and 7 on sheet c2022-075F in globo:

**No. 6 Eligibility criteria—disability is not a disease, illness or medical condition**

Page 7, clause 16. Insert after line 16—

(3A) To avoid doubt, a disability is not a disease, illness or medical condition for the purposes of this section.

**No. 7 Eligibility criteria—mental health impairment is not a disease, illness or medical condition**

Page 7, clause 16. Insert before line 17—

(3B) Also, a mental health impairment within the meaning of the *Mental Health and Cognitive Impairment Forensic Provisions Act 2020* is not a disease, illness or medical condition for the purposes of this section.

I have spoken at great length about my concern of the impact—and I do not say "potential impact"; it will be the impact—of the legislation on the disabled and those with mental health impairment, as we have seen in a number of jurisdictions overseas. There can be no question about this from the evidence overseas. Together, these amendments seek to act as a bulwark against the possibility of those vulnerable people being drawn into the VAD net. There is no suggestion that is something that anyone wants—and I am not suggesting that the proponents want this—but rather it is a consequence of having the legislation framed as it is. What one can do to create a bulwark against, and push down on, this possibility is important. These two amendments would ensure that neither a disability nor a mental health impairment could be considered a disease, illness or medical condition for the purpose of eligibility under clause 16 of the bill. Amendment No. 6 would insert at clause 6 a new subclause (3A), which states:

(3A) To avoid doubt—

we are trying to make sure that this does not happen—

a disability is not a disease, illness or medical condition for the purposes of this section.

It is a clear, definitive statement that will be in black-letter law for everyone to observe. As drafted, the bill leaves open the possibility—as we have seen in many other cases debated over the course of the afternoon and this evening—that disability could be considered a relevant condition if other eligibility criteria are met. People with disabilities are frequently told that they may not make six months but in fact outlive that prognosis. Together, these amendments, but particularly amendment No. 6, would put it beyond doubt that the bill is not designed to set up a scheme for State-authorised assisted suicide or euthanasia of a person with a disability. Amendment No. 7 would insert at clause 6 a new subclause (3B), which states, to avoid doubt:

... a mental health impairment within the meaning of the *Mental Health and Cognitive Impairment Forensic Provisions Act 2020* is not a disease, illness or medical condition for the purposes of this section.

Proponents of the legislation deny that the bill would allow this. Their position is this cannot happen. This is the position of the proponents of the bill. If that is so, it hardly could be described as an unreasonable request for consideration that we make sure that we place something into the bill that makes it more robust. The amendments would put beyond doubt that the bill is not designed to set up a scheme for State-authorised assisted suicide and euthanasia. I commend the two amendments to the House.

**The Hon. ADAM SEARLE (22:15):** The co-sponsors of the bill oppose the amendments, although I acknowledge their good intent. Both amendments repeat existing provisions in the bill. In the case of disability, clause 16 (2) (a) states that a person is not eligible for access to voluntary assisted dying merely because the person has a disability. In the case of mental health impairment, clause 16 (2) (c) states that a person is not eligible for access to voluntary assisted dying merely because the person has a mental health impairment. There is no doubt that disability and mental health impairment are not terminal illnesses, diseases or conditions that would make a person eligible for voluntary assisted dying. The existing wording of the bill, drawn from Victoria and Western Australia, is working well. The two amendments are superfluous, do not achieve anything new and complicate things by repetition. For those reasons, we do not support their inclusion in the bill.

**The CHAIR (The Hon. Wes Fang):** The Hon. Greg Donnelly has moved amendments Nos 6 and 7 on sheet c2022-075F. The question is that the amendments be agreed to.

**The Committee divided.**

Ayes ..... 12  
 Noes ..... 23  
 Majority..... 11

#### AYES

Amato	Farlow (teller)	Moriarty
Banasiak	Houssos (teller)	Moselmane
Borsak	Martin	Poulos
Donnelly	Mason-Cox	Tudehope

#### NOES

Barrett	Franklin	Primrose
Boyd	Graham	Roberts
Buttigieg (teller)	Higginson	Searle
Cusack	Hurst	Sharpe
D'Adam (teller)	Jackson	Taylor
Faehrmann	Mallard	Veitch
Farraway	Mitchell	Ward
Field	Pearson	

#### Amendments negated.

**The Hon. GREG DONNELLY (22:25):** By leave: I move my amendments Nos 1 and 2 on sheet c2022-093B in globo:

##### No. 1 Cooling off period

Page 26, clause 59. Insert after line 35—

- (3A) The coordinating practitioner may not prescribe a voluntary assisted dying substance under subsection (2) for the patient unless it is at least 48 hours after the patient made the patient's final request under section 48.

##### No. 2 Cooling off period

Page 27, clause 60. Insert after line 21—

- (3A) The coordinating practitioner may not prescribe a voluntary assisted dying substance under subsection (2) for the patient unless it is at least 48 hours after the patient made the patient's final request under section 48.

The amendments to clauses 59 and 60 would require a 48-hour period to elapse between a person making an administration decision and the co-ordinating practitioner actually prescribing the lethal poison to be administered for the purpose of assisted suicide or euthanasia. It allows—and is very specifically intended to do so—time for the patient to exercise what is claimed time and time again by proponents of the legislation as the ability to exercise voluntary choice to, in this particular instance, as I am proposing through these two amendments, revoke the decision to end their life. There is a period of a small lapse of time so that they, on reflection, may decide not to proceed. Surely for a person in such circumstances, that very small window is something we should consider to enable them to make a decision that they know what the end point is or, in effect, revoke that decision at least at that point in time and then they will proceed. Clause 54 of the bill states:

A patient for whom the request and assessment process has been completed may decide at any time not to take any further step in relation to access to voluntary assisted dying.

The 48-hour cooling-off period—and I refer to it unapologetically as that—is a time for reflection and consideration. It would create space for, as I said, reflection and consideration and perhaps second thought. There may be a piece of information that a child has just found out or it has just been communicated, for example, that they may have a grandchild that they were not expecting or whatever the case may be. Those sorts of things, which are so utterly human, can provide reasons why not to succumb to ending one's life. I commend the amendments to the Committee.

**The Hon. ADAM SEARLE (22:29):** The co-sponsors do not support the amendments, which will mandate a 48-hour waiting between the final request and the time when the voluntary assisted dying substance is prescribed. The amendments provide no real safeguard but add unnecessary delay to an already time-consuming process at a point in someone's life when they do not have time. The process in the bill is not rushed; it is involved and it takes considerable time and energy. Only someone who truly wants voluntary assisted dying and whose

wishes are enduring will be able to get through the process. There are extensive assessments involved and a high bar of criteria that each medical practitioner must be satisfied about before moving to the next stage. Most patients will not be able to get through the process in the prescribed minimum five days in the bill. From the experience in Victoria, we know that most patients will take close to a month. The board must issue a substance authority even after the final request has occurred. The coordinating practitioner must provide a prescription to the supplier and the substance must be dispensed. Those events are unlikely to happen immediately.

At the end of the day, if the patient has finished the arduous process of satisfying two medical practitioners that their death is in line with the prognosis requirements provided in the bill, that they are suffering in a way that is intolerable to them, and that they have made an informed and enduring decision that is not impacted by pressure or duress, then the bill should not impose another day requiring them to wait further. There is no evidence that cooling-off periods lead to patients changing their minds. The 48-hour cooling-off period in the 2017 bill is not relevant here because this bill includes a mandatory five-day period between the first and final request, which the 2017 bill did not. The amendments will create a statutory delay that will prolong a patient's suffering when they can no longer bear that suffering. The amendments should not be supported.

**The CHAIR (The Hon. Wes Fang):** The Hon. Greg Donnelly has moved amendments Nos 1 and 2 on sheet c2022-093B. The question is that the amendments be agreed to.

**The Committee divided.**

Ayes .....12  
Noes .....23  
Majority..... 11

**AYES**

Amato	Farlow (teller)	Moriarty
Banasiak	Houssos (teller)	Moselmane
Borsak	Martin	Poulos
Donnelly	Mason-Cox	Tudehope

**NOES**

Barrett	Franklin	Primrose
Boyd	Graham	Roberts
Buttigieg (teller)	Higginson	Searle
Cusack	Hurst	Sharpe
D'Adam (teller)	Jackson	Taylor
Faehrmann	Mallard	Veitch
Farraway	Mitchell	Ward
Field	Pearson	

**Amendments negatived.**

**The Hon. GREG DONNELLY (22:40):** By leave: I move my amendments Nos 1 to 5 on sheet c2022-074A in globo:

**No. 1 Definitions—consequential amendment**

Page 40, clause 88, lines 5–9. Omit all words on those lines.

**No. 2 Definitions—consequential amendment**

Page 40, clause 88, line 14. Omit all words on those lines.

**No. 3 Participation—consequential amendment**

Page 40, clause 89, line 40. Omit all words on those lines.

**No. 4 Non-participation—residential facilities**

Pages 41–46, line 2 on page 41 to line 34 on page 46, proposed Part 5, Division 2, Subdivisions 1–4, clauses 90–97. Omit all words on those lines.

**No. 5 Non-participation—health care establishments**

Pages 47–50, line 2 on page 47 to line 30 on page 50, proposed Part 5, Division 3, Subdivisions 1–4, clauses 99–106. Omit all words on those lines.

The amendments would leave in place the rights referred to in clause 89—for a residential facility or healthcare establishment to decide that it will not provide services relating to voluntary assisted dying at the facility or establishment—subject only to the obligations set out in clause 98, which are for those entities to inform the public in an appropriate manner about the non-availability of voluntary assisted dying at the facility or establishment. All other limitations on the rights to freedom of association and freedom of belief would be deleted from the bill. That is what I am proposing.

The bill as it stands unduly and unnecessarily imposes on those fundamental rights of association and belief. The CEO of the Louis Brier Home and Hospital in Vancouver, David Keselman, has described the distress felt by the Jewish nursing home's staff and residents, including those who are Holocaust survivors, and the residents' families, when Dr Ellen Wiebe came into the aged-care residence to administer a lethal injection to one of the residents under Canada's medical-aid-in-dying law. The imposition of such acts, i.e., assisted suicide and euthanasia—"voluntary assisted dying", as the proponents prefer to refer to the actions—on a facility with an ethos in which such acts are considered abhorrent is utterly unwarranted.

What are we talking about as being abhorrent? It is pretty straightforward. It is the killing of an innocent human being. The proponents of the legislation refuse to acknowledge what the legislation provides for in terms of the actual acts undertaken. That is the act of the person drinking a lethal dose of a poison that will kill them or having a doctor or, as provided for in this legislation, a nurse practitioner inject the person and kill them. That is what the bill does.

I am sure all members understand that very clearly. Many people hold dear the view, which may come from a religious motivation but not necessarily a religious motivation, that the killing of an innocent human being is abhorrent and wrong. It is morally wrong to kill another human being. Sponsors of the bill claim that because an aged-care residence is an individual's home, it is not open to such a residence to establish, as part of its ethos, a clear policy that acts of voluntary assisted dying—whether through self-administration or administration by a doctor or nurse practitioner—are not permitted on its premises. That view, position or situation provided in the legislation is a direct violation of the fundamental human rights of freedom of association and freedom of belief.

We live in a plural, liberal democracy. I am sure every one of us each day, in one way or another—ourselves and our families—count our blessings that we live in such a wonderful country that provides this plural, liberal democracy with the freedoms that we all enjoy and benefit from. The bill, as it stands, will prevent any group of people in this State from exercising their right to freedom of association by joining together to establish an aged-care residence where, by agreement, there would be no acts of assisted suicide, euthanasia or VAD. In other words, those individuals collectively seek to be part of a facility, to work in a place and fulfil a vocation of care and looking after people, but in circumstances where the residents have deliberately made the choice to come into a religious, ethos-run facility.

It really does not matter whether it is HammondCare, which people are well familiar with; or Anglicare, which people are familiar with; or Catholic Health Australia; or BaptistCare. Those organisations have been established and operate on the basis—now and into the future—with that core belief very clearly animating all that they do, and that is to respect human life to its natural conclusion. People do not have to agree with that, and there are members in this Chamber who support this legislation who clearly do not agree with that. I am not saying that they are not entitled to do that. That is their view; that is fine. But what the bill does, and what the proponents of the bill have deliberately created, is a piece of legislation that is going to impose their view of the world on others.

It seems to me that that imposition of a particular view of the world and, in particular and quite specifically this matter of end of life and dying—we are talking about the dying process commencing and we know that that is a process that reaches a conclusion, but those organisations that are often but not always faith-based, are animated by the very strong view or ethos that respect for human life is fundamental. They see human life as an inalienable right of those individuals to have and retain to the end of their life. The idea that individuals would be assisted to facilitate suicide or be euthanised in their facilities is abhorrent to them. At the end of the day, the proponents tell us all about choice and they like to lecture everyone about choice in regards to situations like this. That is right.

At the end of the day, if there are people who wish to end their life by voluntary assisted suicide or euthanasia, they have a choice. They should not seek to live in those sorts of facilities. That is the choice that they should be exercising because those organisations—if I could put it this way—were there first. Some of those organisations have histories going back not years or decades but sometimes over hundreds of years. One cannot dismiss or set aside what is at the core of their mission, and that is this respect for human life and God's natural end. I agree that there is choice, and residents can choose not to live in those facilities. They can live in another facility if that is what they wish to do, and allow those residences to run in such a way that their core purpose,

their animating ethic, is respect for human life to its natural end. But no, that is not acceptable to the proponents of this legislation. They seek to impose their view on those religious-ethos organisations.

It is not acceptable to leave them alone and let them get on with what they are doing. They must submit. They have no choice. They must submit on the terms that are provided in the legislation. I am sure the proponents do not see it this way because if they did they would probably be a little bit more sympathetic, but this is essentially an authoritarian imposition on what are, in our civil society, associations of people coming together for a purpose, to do something, and that is intrinsic to the nature of our pluralist democracy. To impose on them provisions whereby, within their facilities, people's lives will be ended by assisted suicide or euthanasia is utterly repugnant and it is draconian. They are seeking to impose their ethos, their view of the world, which favours assisted suicide and euthanasia on everyone. That is their position. Everyone has to accept it. Everyone is obliged to provide for assisted suicide and euthanasia under the roof of a facility.

Why shouldn't each aged-care resident and each health facility be able to choose its own ethos or operate under an ethos that it currently has? Why should that not be so? The commencement clause of the bill will ensure that there is an 18-month period of preparing for its implementation, and that gives plenty of time for aged-care residents and health facilities to publish their policies and for residents who disagree with the policy to seek alternative accommodation. I have spoken to people about the practical implications of this, and I know that honourable members will have been provided with information and literature from the religious ethos organisations that run facilities. The one that I have in front of me—and I am sure people have seen it—is dated 11 May and is on the combined letterhead of HammondCare, Catholic Health Australia and Anglicare. But the situation is that the idea that these organisations will be required to allow in what are people to, in effect, provide for assisted suicide and euthanasia of residents is just extraordinary. The proponents of the bill obviously do not care about the impact of undertaking these procedures inside these facilities. It just cannot be being considered at all.

I have touched on the fact that there are core, central elements to the mission of these organisations that include that human life is to be respected to its natural end. They insist on that. We are not asking, and they are not asking, for the proponents of the legislation to agree with that; they can have their own views but, in effect, leave us alone. The proponents say, "No, we insist. We want the law to insist that, notwithstanding your religious ethos or your other ethos that may not be religious based but one that, in fact, does not provide for agreeing with assisted suicide or euthanasia, you have to submit and allow into your facility the practice of assisted suicide and euthanasia." The institution's fundamental ethos is fundamentally shattered.

It should come as no surprise that the types of individuals who are drawn to working for an ethos or a religious ethos residential aged-care facility are individuals who have a particular view of the world. They have a particular sense and they are called to a vocation of working within these facilities because they believe very strongly in certain matters of value that are dear to them, which are at the core of their humanity. They believe in the preciousness of human life, and they find the idea of killing a human being repugnant and morally wrong. But they will have to be exposed to voluntary assisted suicide and euthanasia by virtue of the fact that there will be people coming in—a nurse practitioner or a doctor—to undertake this. The effect is that the staff working there will be exposed to what is going on. And it is clear from the legislation—I stand to be corrected—that the staff and indeed the facility are essentially not going to be given warning about this. It will just happen. In other words, the arrangement with the resident who wishes to go down this path is worked out with them and then it is for the facility to find out, presumably by email or a text or a phone call, whatever it might be, that this is going to happen. They just come in and it is done.

So you have the staff and you have the volunteers. These organisations are significantly animated by activity around volunteer work—going in there, visiting the residents, taking them out and doing all those sorts of things. Like the employees, the volunteers are strongly driven by this ethos, these values, this view of the world. And what about the other residents? We hear from the proponents of the legislation that the only view that counts, the only thing that matters in all of this consideration, is an individual who wishes to make a decision, and that trumps the institution and all it stands for. It trumps all the employees who are drawn to work there, from a doctor right through to a person who works in the kitchen and makes meals.

It trumps all the volunteers in the facility and it trumps all the other residents who live there, who made a choice to go there. They made a choice. They made a conscious decision that they wanted to live in a HammondCare facility, a BaptistCare facility, a CatholicCare facility or an Anglican Care facility. I know the Presbyterians have facilities, and one could go on. That should not be so. The notion that a single person's right trumps all of that seems to be an extraordinary proposition but a proposition that obviously the proponents of the legislation not only believe in but also are seeking, through this legislation, to impose on the citizens of New South Wales. I will leave my comments there. There is much more that can be said. I know it is late in the hour, but I have to say that, out of all the matters to be dealt with in the upper House, if I had any preference to deal with

these things, I would have liked this dealt with much earlier in the piece, where people were fresh and paying attention. That is not a reflection on anyone. It is just late and people's attention obviously wanes a little bit.

Faith-based aged-care homes offer a choice for those who want to be cared for in an environment that will never have that offered. They do not want anything to do with it. They do not want it happening in their home, which is the residence. If voluntary assisted dying is to be voluntary for the public, then any voluntary assisted dying scheme should be voluntary for clinical staff, medical officers and those organisations and, as I have mentioned, the volunteers. This expectation is grounded in the bill's title—"voluntary"—which is conveniently set aside for this particular consideration. There is no voluntariness in regard to whether or not this takes place in residential facilities, and the expectation must be honoured.

The bill clearly forces faith-based aged-care facilities to allow doctors or nurse practitioners into their premises to prescribe and administer what are restricted pharmaceuticals with the intention of causing the death of a resident, without even informing the facility. They can just come in and do it. I have to tell members, that is a pretty bloody outrageous thing to think about. Someone can just come in and end a person's life and they have to pick up the pieces. I will conclude on a reflection, because it was the basis of exchange, in the parliamentary hearing, about the impact on people working in these facilities, particularly with respect to the residents that are being cared for by these individuals.

The reflection was on the idea that a person is sharing a facility and one day wakes up, say, mid-to-late morning, and finds out the person next door has been euthanised. Think about that. The person is just gone. That person might have been a mate for ages, but they are just gone. They did not know the person was being euthanised; there was no forewarning. The person is just killed—euthanised. What do you do then? How do you explain that to other residents? Do you sort of say, "Well, listen, well, you know, but, but, but"? I mean, cut it out. The residents will have to be told the person was euthanised. What sort of effect does that have on the whole matrix and tapestry of the relationships embedded in that organisation from the ground up? That is what the proponents of the bill insist must happen. I commend my amendments to the Committee.

**The Hon. SCOTT FARLOW (23:05):** I support the amendments moved by the Hon. Greg Donnelly. I agree with him, they are important amendments. I had preferred that we debate them earlier but this is where they fall in the bill and we are at a late hour to deal with such amendments. At the very heart of it, religious ethos organisations provide such a central part of our aged-care system, and it has come from that ethos of service throughout many generations, whether it be, as the Hon. Greg Donnelly reflected, CatholicCare, Calvary, Anglicare, BaptistCare, HammondCare—facilities that members will be aware of. They provide services to our loved ones. My grandmother, although not a Baptist, is in a BaptistCare facility, and they do a marvellous job.

In all of those organisations, when people come in, there is some understanding of the religious ethos which forms the heart of them. That is often reflected in their staff and the work that their staff do, where their staff are drawn from and the activities in those facilities. The Standing Committee on Law and Justice inquiry heard from many of those providers about the important work they do and the fact that these facilities are also people's homes and people determine they will come into those facilities for certain reasons and for certain things that they offer. Some people do not have the same ability to make a free choice because of their circumstances but most will come in with a free and open mind as to the kind of facility they want to be in and why. I draw the Committee's attention to a couple of submissions made in the law and justice inquiry. The first is from Mr Mark Green, on behalf of Calvary Healthcare, who said:

As we stand aside to allow their fellow resident to take the VAD substance, how do we deal with that person's rights, their beliefs, fears, anxiety and even anger that we have allowed this to happen in their home without their consent? How do we explain to them that we are upholding principle 4 (k) of this legislation—"all persons ... have the right to be shown respect for their culture, religion, beliefs, values and personal characteristics"? This person might say, "This Act has violated my sanctuary and left me with grief and suffering I did not expect to have at this point in my life." And so we end where we began: Assisted dying legislation takes one kind of death and aims to make it easier. It is a deeply sympathetic goal. It also opens the door to new kinds of suffering and abuse—unintended but not unforeseeable.

That goes to the heart of what the Hon. Greg Donnelly was talking about previously that these are certain organisations. We all know that in organisations like aged-care facilities death is a reality, sadly. But changing that whole compact in terms of the work that is done with people in that aged-care facility and turning that on its head when people are subscribed to a certain religious ethos, I find that troubling. We know that the aged-care providers find this troubling. The Hon. Greg Donnelly read extracts of that letter that was provided to us all. This is not a service that these organisations have to provide. It is a service they provide for a fee but often in a highly subsidised environment from faith organisations. That is something we need to continue in our society. I also draw the Committee's attention to the comments made by Mr Grant Millard on behalf of Anglicare. He said:

... primary focus will draw the attention of this Committee to the fundamental lack of balance in this legislation. It is flawed because, although the bill in clause 89 expresses a form of conscientious objection for residential aged-care homes, the operative provisions of part 5 override any home's objection to VAD by absolutely prioritising the decision of one resident against the interests of their

community who fundamentally disagree with the unnatural termination of human life. This result is untenable. It goes further than many of the proponents of VAD suggest in their own submissions. In support of this claim, I draw your attention to submission 43, of the NSW Nurses and Midwives' Association, where at paragraph 10 the position statement reads:

Legislative reform must ensure that no individual, group or organisation shall be compelled against their will to either participate or not participate in an assisted or supported death of a person.

The bill before this committee contravenes this principle by compelling residential aged-care homes to participate in VAD. It will be impossible for the property, resources and staff of homes not to be involved. The amendments proposed in the Anglicare submission ...

It goes on, and those amendments are largely reflected in the Hon. Greg Donnelly's amendments. They are sensible amendments, which will still see VAD be able to take place in aged-care facilities but will also see protections for those religious ethos aged-care facilities to continue living up to their ethos and be able to protect their staff and their residents who have chosen to live and work in a certain environment. I believe the amendments should be supported by the Committee.

**The Hon. BRONNIE TAYLOR (Minister for Women, Minister for Regional Health, and Minister for Mental Health) (23:11):** I contribute to debate on these amendments. The amendments will have highly distressing consequences for people who are at the end stage of a terminal illness and who will want to access voluntary assisted dying. The amendments seek to give the boards and directors of institutions unfettered rights to impose their objections to voluntary assisted dying on residents and patients in their care, regardless of the suffering it will cause to that dying person. Faith-based facilities are often the only available choice for people who need supported accommodation or health care, especially in rural and regional areas where there are often few options. There are areas out west where one residential aged-care facility serves hundreds, if not a thousand kilometres, of region. Even in city areas it is often challenging to find residential care that meets a person's various needs, including being close to family and supports, which are so important at that time in your life.

Why should a dying person be coerced into experiencing a painful and traumatic death that they wish to avoid because, at no fault of their own, they live or are being treated in a facility whose management objects? Institutions do not suffer the way real people do. The bill must protect patients' autonomy over their lives and medical care. As I have said from the beginning, it is their choice. Cause of harm done by institutions is already emerging in other States which do not legislate institutional responsibilities in their laws. I will detail some of that harm. A Catholic aged-care facility in Melbourne refused to let the statewide pharmacy service on the premises to deliver medication to Colin. Colin was a 79-year-old man dying of metastatic bowel cancer who was assessed as eligible. They waited nine days to tell him and also forbade him from talking to anyone in the home about his choice. He could not even say goodbye to his friends when he was transferred to the Royal Melbourne Hospital. Once there, Colin, who was suffering significantly, took the medication within two hours of receiving it.

Margaret, an 82-year-old former nurse dying of the rare neurodegenerative disease corticobasal syndrome, became unable to do anything for herself and had to live in full-time care in a facility run by CatholicCare in Melbourne. She was assessed as eligible for voluntary assisted dying, but she lived in fear. She lived in fear that her facility would try to circumvent her access to assistance. She arranged a transfer, without telling any of the staff or any of her friends. She accessed the substance on the day the pharmacist delivered it. Margaret's family said the process was distressing for all of them. Margaret should have been able to access voluntary assisted dying in her home, without the stress. This was Margaret's choice.

Tony, a 75-year-old Perth man dying of brain cancer, who was assessed as eligible for voluntary assisted dying with only about 30 days to live, faced significant barriers to access at the hands of institutions. Tony was being treated in a public tertiary hospital but had to be transferred to another hospital for care. Although he was there as a public patient, that private hospital told him they would not let him access voluntary assisted dying on their premises. He was subsequently transferred to another hospital that initially indicated they would support access. However, after his admission, the hospital changed its mind and informed Tony's daughter that more time was needed to prepare. In the last days of his life, Tony's family was left arranging a transfer to another hospital, rather than cherishing that time together—that time which was Tony's choice about how he had decided to die and access the voluntary assisted dying laws.

There have been a lot of conversations today about the fact that residential facilities are people's homes. Indeed, they are. They are people's homes, and people should not be denied access to medical care in their home. We would not let strata committees ban voluntary assisted dying in an apartment. The bill only requires hospitals to transfer patients for assessments in administering the substance; they are well placed to do this. The bill goes far enough in appeasing institutional rights. People in aged care, in any form of residential care and in hospital, must retain the right to make choices about their life and their medical options. Why support a law aimed at substituting people's decisions over their life with the decisions of distanced boards and directors? I come with a wealth of experience. I spent quite a bit of my career as a clinical nurse specialist in palliative care. I have said

that many times in this place. I absolutely respect a person's choice. This is about choice. This legislation is good; it is robust. I ask that members of this Chamber do not support this amendment.

**The Hon. DAMIEN TUDEHOPE (Minister for Finance, and Minister for Employee Relations) (23:17):** Well, what do you say to that? The nature of freedom of association is fundamentally misunderstood in that submission. People get together, join or participate in organisations, on the basis that they all abide by a common set of rules and the ethos of the group they join. That is the nature of the freedom of association that we are engaged in in circumstances where we embrace what that institution calls for. The suggestion that the law would not be applied to the strata committee of a block of units is right. There should be no interference with someone occupying their own unit or living in their own home. But when a group of people get together and agree to live together, they give up certain rights. We all give up rights in circumstances where we freely associate with other people—whether it is in a club or through some other organisation—at the time we join that body of people.

Under the bill, the institution, rightly, would be obliged to tell people, "These are the rules that we apply and if you want to remain as a resident in this group, that's the law that we would apply." The notion that you would not say to someone in their own home "You can't access this" is patent nonsense, because the person lives amongst a group of people—not just by themselves, but with that group of people in that institution's facility. That is the association that they have joined. To single out a person for the purposes of making sure that they can have a set of rights inconsistent with all the other people who live in that facility is an attack on the rights of all of the other people in the group. That is why the argument is so flawed: It imposes on the rights of everyone else for the benefit of the one who says, "I want it". That is the attack occurring here. Notwithstanding some of the very troubling circumstances which the Minister outlined, it does not address the problem of how to protect the rights of all the other people who have joined the association, not just the person that you say has a right that overrides all of theirs.

The other problem that the Minister identified is, of course, that sometimes the institution might be the only aged-care provider in a regional area for many, many miles around. That constitutes a fundamental problem for this bill, because if a law like this is imposed on an institution with a set of fundamental beliefs, it may not be able to continue to operate. If the rights of those organisations are breached in this manner, that may give rise to the very troubling circumstances where they have to exit the industry, because organisations can form the view that they will not cooperate in a moral evil, if that is their perception. If that is the basis on which they say they will not be able to deliver or make available circumstances where people can avail themselves of the opportunities afforded by this bill, a corollary of that is the one aged-care facility for many, many hundreds of miles may not be there at all. That is the problem with affording rights to all those other residents who freely agree to participate in accordance with the ethos of the institution. Sometimes we give up our rights—that is the nature of being part of a freely organised group of people.

**The Hon. COURTNEY HOUSSOS (23:22):** I speak in support of the amendments moved by the Hon. Greg Donnelly. I think this is a very important amendment. The hour is late and the Chamber is tiring, but I want to place a few things on the record. I very much agree with the contributions of the Government Whip and also of the Leader of the Government. I thank them for their considered and careful contributions and, of course, I thank the Hon. Greg Donnelly for introducing these amendments. I think there was a fundamental misunderstanding by the Minister when she drew a comparison with outlawing voluntary assisted dying in strata homes.

It is true that aged-care homes are people's homes, but it is a fundamentally different relationship than an apartment building. When families entrust their loved ones to an aged-care facility, they are not just looking at the facilities that are available—the bed, the toilets—they are looking at the community and the ethos that is provided. This is incredibly important because we know in the same way at the start of people's lives that families are looking for childcare facilities, as people age they are looking and trying to find a facility or a place for their loved ones to go. They are vulnerable and they need an advocate for them who will be outside that facility. That is why I have advocated so strongly for safe staffing levels in aged-care facilities in the same way that I support childcare ratios. The external protections for parents and children or family members at the other end of life are incredibly important.

For that reason, it is very different for a family to say, "I choose this facility where voluntary assisted dying will not be predicted. It's just not going to be on the table." If that is something that that person would like, then they are well within their rights to exercise that choice and find a different facility that fits that ethos. As families are thinking about who they will entrust their loved ones to for their last days, this is an important factor in their decision. We should be allowing that choice and we should be enabling that freedom in this bill tonight and not enforcing one that is completely incompatible with the religious ethos, or just the broader cultural ethos, of the care that is being provided. I do not think that is unreasonable to ask for. I commend the amendments to the Committee.



**The Hon. GREG DONNELLY (23:25):** I will make just a couple of very quick comments. In the contribution to debate made by the Hon. Bronnie Taylor, the Minister specifically used the word "appeasing" the religious ethos organisations. In other words, her submission was that, with respect to the bill as it is, they should be considered—and these are my words—grateful because we have appeased them, they have got something. In other words, with respect to hospitals, for example, we understand what is in the bill. With respect to residential aged-care centres, we are not imposing upon them to be the ones to do it but, nevertheless, they are required to be enabled under the bill, so we have appeased them.

Chair, can I tell you this? When a Minister of the Crown gets up in this Chamber, as the Minister did, and effectively says to all of these operators, as the Minister has just done this evening, that, "You've been appeased"—you know, "We have appeased you", or "the bill has appeased and assuaged your concerns", Chair, can I tell you that that is an extraordinary thing to do? The notion is absolutely chilling that the Government—and the Minister is a member of the Government—has the gall to say that they have been appeased by the bill. They have come forward robustly to all members of the Legislative Council in their own ways. When I say "robustly", I mean by communication. They ventilated also to a degree, but not nearly as satisfactorily to the degree in the other place when this was dealt with last year. But it is all on the table now; this is what we are dealing with.

This all came up in a huge amount of serious consideration and discussion that the Hon. Scott Farlow referred to in the context of the inquiry, and it was examined in a lot of detail. The report itself has large reflections on this very point, starting approximately on page 42 and extending over pages 43, 44, 45, 46 and 47—all annotated and footnoted with all the submissions from the religious ethos organisations outlining their concerns. And what do we get from the Hon. Bronnie Taylor? Well, you have been appeased, you should be grateful, you should be happy you have got some scraps, be grateful. I just think that is extraordinary. On reflection, I think the Hon. Bronnie Taylor will rue the day she made that statement tonight.

On a related matter—and this is my last point—the Hon. Bronnie Taylor loves to tell us about her nursing experience and how she has done all this work over a period of time and she is the residential expert on matters health and what have you. We get that normally at least once a week from her. But can I just say that the Minister knows better than virtually anyone in this Chamber, because of this experience we are told about time and time again, that the transfer of patients between facilities is de rigueur in medicine and health. It happens all the time. People are transferred from one facility to another. They are transferred back to homes. They are transferred to another facility in another town or another facility on the other side of town.

This goes on all the time and she knows that. But she will not acknowledge the fact that there is a way in which this can be dealt with practically; that the resident could be transferred to another facility, one that would provide for the ability of that person to, if I use the vernacular, go out on their own terms to end their life. It can be done; the transfer of patients happens all the time. Yet I find extraordinary the utter arrogance of the statement coming from a Minister of the Crown that the religious ethos organisations should feel appeased by the goodness of the provisions in the bill.

**The CHAIR (The Hon. Wes Fang):** The Hon. Greg Donnelly has moved amendments Nos 1 to 5 on sheet c2022-074A. The question is that the amendments be agreed to.

**The Committee divided.**

Ayes .....13  
Noes .....23  
Majority.....10

**AYES**

Amato  
Banasiak  
Borsak  
Donnelly  
Farlow (teller)

Houssos (teller)  
Martin  
Mason-Cox  
Moriarty

Moselmane  
Poulos  
Rath  
Tudehope

**NOES**

Barrett  
Boyd  
Buttigieg (teller)  
Cusack  
D'Adam (teller)

Franklin  
Graham  
Higginson  
Hurst  
Jackson

Primrose  
Roberts  
Searle  
Sharpe  
Taylor

## NOES

Faehrmann  
Farraway  
Field

Mallard  
Mitchell  
Pearson

Veitch  
Ward

**Amendments negatived.**

**The Hon. GREG DONNELLY (23:41):** I move my amendment No. 1 on sheet c2022-096:

No. 1 **Parliamentary Committee**

Page 75. Insert before line 41—

**184A Oversight of Act by Parliamentary Committee**

- (1) As soon as practicable after the commencement of this section and after the commencement of the first session of each Parliament, a committee of the Legislative Council must be designated, by resolution of the Legislative Council, as the designated committee for the purposes of this section.
- (2) The resolution of the Legislative Council must specify the designated committee's terms of reference in relation to the operation of this Act.

This important amendment is directly modelled on section 27 of the State Insurance and Care Governance Act 2015. That is where we found this model to put before the Committee. Members would be aware that under that section the Standing Committee on Law and Justice is charged with the supervision of the operation of the insurance and compensation schemes established under the workers compensation and motor accidents legislation. Given the importance of such schemes to the lives, health and welfare of the people of New South Wales, this parliamentary supervisory role is very clearly warranted and needed. No-one debates that; it is accepted.

How much more then should an equivalent supervisory role be given to a designated Legislative Council committee in relation to a piece of legislation that will provide a framework for voluntary assisted dying, or in the actual parlance of what is done, assisted suicide or euthanasia? To reject the amendment would be for the Committee to act in establishing the scheme while basically washing its hands of any responsibility for supervising it and simply allowing a board to oversight but that is that—let's just hope the board gets it right. I commend the amendment to the Committee.

**The Hon. ADAM SEARLE (23:43):** The co-sponsors recommend against adoption of the amendment. Although I accept what it has been modelled on, the legislation already provides for significant oversight of the operation of the Act and the board by the Minister. The Ombudsman will have jurisdiction to investigate complaints. There is more than enough supervision of the legislation, its operations and its institutions in the bill. This is an unnecessary duplication and we ask the Committee not to support the amendment.

**The CHAIR (The Hon. Wes Fang):** The Hon. Greg Donnelly has moved amendment No. 1 on sheet c2022-096. The question is that the amendment be agreed to.

**Amendment negatived.**

**The Hon. GREG DONNELLY (23:44):** I move my amendment No. 2 on sheet c2022-096:

No. 2 **Review of Act**

Page 76, clause 185(2)(b), line 11. Insert "and high quality care and treatment, including palliative care and treatment," before "as a person".

Clause 185 provides for a review of the Act. Subclause (2) of that clause requires the review to include:

... consideration of the principles set out in section 4 including, in particular, the following principles—

- (a) a person is entitled to genuine choices about the person's care, treatment and end of life, irrespective of where the person lives in New South Wales and having regard to the person's culture and language,
- (b) a person who is a regional resident is entitled to the same level of access to voluntary assisted dying as a person who lives in a metropolitan region.

Paragraph (b) of this subclause refers to a principle in clause 4 of the bill that is no longer in the bill in that form following a successful amendment passed in the other place by the member for Wagga Wagga, Dr Joe McGirr, when the matter was dealt with in that House in November last year. The relevant principle in paragraph (i) in clause 4 (1) of the bill now reads:

- (i) a person who is a regional resident is entitled to the same level of access to voluntary assisted dying and high quality care and treatment, including palliative care and treatment, as a person who lives in a metropolitan region,

This amendment simply carries over into the review clause the language which was agreed to in the other place in the debate last year so that it reflects the same principle. I commend the amendment to the Committee.

**The Hon. ADAM SEARLE (23:46):** I indicate that the co-sponsors of the bill agree with this amendment for the reasons outlined by the Hon. Greg Donnelly that, in fact, it does reflect the amendment proposed and carried through by Dr Joe McGirr in the other place.

**The CHAIR (The Hon. Wes Fang):** The Hon. Greg Donnelly has moved amendment No. 2 on sheet c2022-096. The question is that the amendment be agreed to.

**Amendment agreed to.**

**The Hon. ADAM SEARLE (23:47):** By leave: I move my amendments Nos 1 to 3 on sheet c2022-105B in globo:

**No. 1 Statistical data**

Page 69, clause 170(1). Insert after line 17—

- (aa) socio-demographic matters for applicants for voluntary assisted dying, including in relation to age, gender, local government area of residence and, if available, cultural background and level of education,

**No. 2 Statistical information**

Page 69, clause 170(1). Insert after line 22—

- (ca) persons assessed as eligible for voluntary assisted dying in a first assessment,
- (cb) persons assessed as ineligible for voluntary assisted dying in a first assessment,
- (cc) persons assessed as eligible for voluntary assisted dying in a consulting assessment,
- (cd) persons assessed as ineligible for voluntary assisted dying in a consulting assessment,
- (ce) instances of persons being assessed as ineligible for voluntary assisted dying because the persons were acting because of pressure or duress,
- (cf) the number of voluntary assisted dying substance authorities granted,
- (cg) the number of voluntary assisted dying substance authorities refused,
- (ch) the number of times a voluntary assisted dying substance has been dispensed,
- (ci) the number of confirmed deaths from the self-administration of a voluntary assisted dying substance,
- (cj) the number of confirmed deaths from practitioner administration of a voluntary assisted dying substance,
- (ck) the number of instances of an unused voluntary assisted dying substance being given to an authorised disposer for disposal because the patient died before taking the substance,
- (cl) the number of instances of remaining voluntary assisted dying substance being given to an authorised disposer for disposal because it was left over after the patient died.

**No. 3 Annual report**

Page 70, clause 173(2). Insert after line 14—

- (ea) statistical information the Board is required to record and keep under section 170(1)(aa) and (ca)—(cl), and

These amendments emerged from communications and discussions I had with Mr Bernie Smith, the New South Wales branch secretary of the Shop, Distributive and Allied Employees Association. Subsequent discussions were held with the Labor supporters of the bill and then with all of the other co-sponsors of the legislation in this House. We all agreed that inclusion of these provisions was reasonable and actually facilitated the objects of the legislation. The first amendment provides for the collection of certain socio-demographic data, which we think will be important over the medium to long term to see who is getting access to the framework of the legislation and where they are located, and other information that is provided.

The second amendment also provides for the important collection of information such as who is approved and who is not approved; how many assisted dying substance authorities were granted, how many were refused and how many have been dispensed; how many people have died from self-administration versus practitioner administration; and other records relating to the lethal substances. Importantly, we think it is important to collect data on instances of persons being assessed as ineligible for voluntary assisted dying because the persons were acting under pressure or duress. We, as co-sponsors of the bill, have been concerned to make sure that there are adequate protections in the legislation against that happening, and we say those protections are robust.

But then, consistent with that, how could we shy from ensuring that the relevant data was collected and then reported on? The third amendment provides that all of the data sought to be collected in amendments Nos 1 and 2 are actually reflected and publicly reported on. We think that is very important. I think this is data that would have been collected and reported on anyway under the more general information-gathering provisions in the bill available to the Minister. Certainly, this information is gathered and reported on in other jurisdictions. But, as I said in my earlier contribution, we think it is reasonable to lay down minimum data collection and publication benchmarks in the bill, which is what these three amendments seek to do. On behalf of the co-sponsors of the bill, I urge the Committee to support these three amendments.

**The CHAIR (The Hon. Wes Fang):** The Hon. Adam Searle has moved amendments Nos 1 to 3 on sheet c2022-105B in globo. The question is that the amendments be agreed to.

**Amendments agreed to.**

**The Hon. ROBERT BORSAK (23:50):** I move my amendment No. 1 on sheet c2022-095B:

**No. 1 Annual reporting about palliative care**

Page 75. Insert after line 40—

**184A Minister to report annually about palliative care spending**

- (1) The Health Secretary must, on or before 31 December in each year, give to the Minister a report setting out—
  - (a) the total amount spent on palliative care in New South Wales generally and in each local health district during the financial year ending on 30 June in that year, and
  - (b) the aggregated amounts spent on palliative care in New South Wales generally and in each local health district during the preceding 5 financial years, and
  - (c) the variation, expressed as both the amount of money spent and the percentage increase or decrease in the amount spent during the relevant periods, in the following—
    - (i) the total amount spent on palliative care in New South Wales generally and in each local health district during the year to which the report relates compared with the preceding financial year,
    - (ii) the aggregated amounts spent on palliative care in New South Wales generally and in each local health district during the 5 financial years preceding the year to which the report relates compared with the corresponding amount reported in the most recent previous report, and
  - (d) any other information prescribed by the regulations.
- (2) For subsection (1)(a), the amount is to be determined by reference to data provided by the Independent Hospital Pricing Authority established under the *National Health Reform Act 2011* of the Commonwealth.
- (3) If the variation referred to in subsection (1)(c) indicates a reduction in the amount spent on palliative care in New South Wales generally or in a local health district from the corresponding amount in the preceding year, the Health Secretary must, within 3 months of becoming aware of the variation—
  - (a) review the operation of this Act, and
  - (b) give the Minister a report about the review.
- (4) The Minister must, within 6 sitting days after receiving a report under subsection (1) or (3), cause the report to be laid before each of House of Parliament.

It is essential to have this reporting mechanism in place to ensure that palliative care spending is adequate in New South Wales. There is nothing voluntary about assisted dying if there is not a properly funded and adequately resourced option for palliative care. When palliative care plans are in place and the services are well funded, there is little need for assisted suicide. Palliative care has 98.5 per cent efficiency in pain control. Without a detailed reporting mechanism in place for palliative care, it is clear to the Shooters, Fishers and Farmers that this Government will continue its current trajectory of underfunding this essential service. I especially mean that as it relates to rural and regional areas of this State. Make no mistake, this Government will not put a cent into palliative care if this suicide bill is passed.

My colleague in the other place the member for Orange, Phil Donato, has firsthand experience of just how willing this Government is when it comes to funding palliative care beds in the bush. From 2017 to 2021 Mr Donato campaigned to have palliative care beds reopened in Orange. Ten thousand people signed the petition, which was debated in the other place, and the Government still would not agree that the service was required. A trial facility was set up, which demonstrated that the service was well used by the community and had a high

occupancy. Now there are two permanent beds and two surge beds in a designated palliative care facility in Orange. Mr Donato said in a private member's statement:

The return of a dedicated hospital-based palliative care facility and service is what the community asked for, and now, finally, that is what has been delivered.

Statistics tell us that palliative care units, nurses and physicians in remote areas of New South Wales are so insignificant that they do not bother to report on them, and we see why when it took Mr Donato and his electorate five years to establish four beds. The Government is more interested in cutting costs with assisted dying than in the quality of end-of-life care. This amendment seeks to legislate that the Minister annually reports to the House the total amount spent on palliative care in New South Wales generally and in each local health district, with aggravated amounts spent over five years and the variation in amounts spent. This reporting mechanism will go some way in providing balance to a bill that wants to terminate our most vulnerable without giving them a chance. It will provide checks and balances and assure that the so-called Voluntary Assisted Dying Bill is indeed voluntary because palliative care is adequately funded and equal options are available for those in our cities and in our regions. Assisted dying is not medical care. The hypocrisy of many in this place and in the other place who claim it is, yet do not support the right of our citizens to have equal access to well-funded palliative care, is evident and alarming. I commend my amendment to the Committee.

**The Hon. DAMIEN TUDEHOPE:** I move:

That the Chair do now leave the chair, report progress and seek leave to sit again at a later hour of the sitting.

**Motion agreed to.**

**The PRESIDENT:** The Committee reports progress. Further consideration of business before the Committee is set down as an order of the day for a later hour.

*Business of the House*

#### **SUSPENSION OF STANDING AND SESSIONAL ORDERS**

**The Hon. DAMIEN TUDEHOPE:** I seek leave of the House to suspend standing orders to move a motion forthwith to suspend the hard adjournment this day.

**Leave not granted.**

*Bills*

#### **VOLUNTARY ASSISTED DYING BILL 2021**

##### **In Committee**

**The Hon. SARAH MITCHELL (Minister for Education and Early Learning) (23:57):** I move amendment No. 1 on sheet c2022-087A:

No. 1 **Annual reporting about palliative care**

Page 75. Insert after line 40—

##### **184A Annual report to include information about palliative care spending**

- (1) The Health Secretary must ensure that the annual report prepared under the *Annual Reports (Departments) Act 1985* for the Ministry of Health for a financial year (a **reporting year**) includes the following information—
  - (a) the total amount spent by the ministry on palliative care during the financial year preceding the reporting year,
  - (b) the aggregated amounts spent by the ministry on palliative care during the five financial years preceding the reporting year,
  - (c) the total of the following for the reporting year—
    - (i) the number of persons to whom palliative care was provided during an admission to a public hospital,
    - (ii) the number of persons to whom palliative care was provided by the public health system other than during an admission to a public hospital.
- (2) The information included in the annual report under subsection (1) must be provided—
  - (a) for the State generally, and
  - (b) for each local health district.
- (3) In this section—

*financial year* has the same meaning as in the Annual Reports (Departments) Act 1985.

*local health district* has the same meaning as in the Health Services Act 1997, section 8.

*public health system* has the same meaning as in the Health Services Act 1997, section 6.

*public hospital* has the same meaning as in the Health Services Act 1997, section 15.

This amendment relates to the reporting of palliative care. All members share support for increased resources for palliative care. This amendment will give members confidence that they will have access to the information they need to understand palliative care funding in New South Wales, particularly in regional areas. As one of few regional members in the upper House, it is very important that we have transparency about this data. It is also important to note that there are challenges and a need for increased resources in the regions. People get great palliative care in regional New South Wales, and that needs to be put on the record. The Government invests hundreds of millions of dollars to support palliative care in this State.

This amendment is self-explanatory. The reason it is different to the amendment moved by the Hon. Robert Borsak, and why I do not support that amendment, is that his amendment talks to the need for the health secretary to have the power to review the entire Act on the basis of a shift in palliative care funding. There is no evidence that voluntary assisted dying will negatively impact palliative care services. In fact, the evidence in other jurisdictions is the opposite. The need for voluntary assisted dying and the provision of palliative care should not be viewed independently. Even in a world where we have perfect palliative care, the need for voluntary assisted dying does not disappear. I commend my amendment to the Committee.

**The Hon. ROBERT BORSAK (23:58):** I speak to the Minister's amendment. It falls well short of my amendment in two significant ways. Firstly, the Minister's amendment to proposed section 184A (1) (a) talks about reporting on the total amount of money spent by the Ministry of Health on palliative care, but it does not break it up by local health districts. I do not accept the Minister's claim that there is reporting about how much money is being spent in the bush. There is not. Secondly, the Minister's amendment to proposed section 184A (2) (a) and (b) consigns the reporting to the annual report, and it disappears into the bureaucratic maze of reporting at the end of each financial year. My amendment actually requires positive action: a review and a report that must be done by the secretary. The Minister is given the report and, ultimately, has six sitting days after receiving it to report it to Parliament.

**The CHAIR (The Hon. Wes Fang):** Order! According to sessional order, it being midnight, I will now leave the chair and report progress.

**The PRESIDENT:** The Committee reports progress. Further consideration of business before the Committee is set down as an order of the day for a future day.

*Adjournment Debate*

## ADJOURNMENT

**The PRESIDENT:** I propose:

That this House do now adjourn.

## ALLEGRA SPENDER FEDERAL ELECTION CAMPAIGN

**The Hon. CHRIS RATH (00:01):** Australia's democracy is robust, healthy and one of the least corrupt in the world. We value the fundamental principles of free and fair elections, and the public enjoys confidence that they participate in a legitimate, unbiased poll. In Australia, that includes clearly defined standards that candidates need to meet before, during and after an election. It is therefore frustrating that the teal Independents contesting the upcoming Federal election are threatening the public's confidence in our democracy. The conduct of Allegra Spender's campaign, in particular, is highly questionable, as recent events demonstrate. On 3 May this year a new solar array was unveiled on the roof of the Holdsworth Community Centre. Allegra Spender attended the unveiling of this gift from the Smart Energy Council, which is the commercial renewable energy body that funded the project. However, email correspondence from Ms Spender's policy adviser states that the gift "was facilitated by renewable energy advocate and the Independent candidate for Wentworth, Allegra Spender". A later media release from Ms Spender's campaign is even more emphatic, stating:

Allegra Spender, the independent candidate for Wentworth, has delivered a large solar array to Wentworth's Holdsworth Community Centre ... Allegra Spender facilitated the gift of a 15 -panel solar system to the ... community organisation.

It seems quite clear that a candidate for the Federal election is attempting to win votes by potentially bribing the electorate with private funding. The Smart Energy Council has supplied these inducements through its private organisation, employing solar and battery storage companies to make the donation. If the association could not be any more obvious, Ms Spender spoke at the unveiling ceremony alongside John Grimes, the CEO of the Smart

Energy Council. A similar story was uncovered regarding Australian Capital Territory Senate candidate and teal Independent David Pocock, who was described as having "facilitated a significant upgrade to Lifeline's solar system in Mitchell, Canberra". The Smart Energy Council, a private organisation, has paid for community infrastructure and attributed the project to the local Independent candidate, David Pocock. To be clear on its own wording, these projects are supposedly "a gift from the renewable energy body, facilitated by the Independent candidate."

These gifts, facilitated by the candidate, are a potential breach of the Commonwealth Electoral Act 1918. Section 326 contains a broad prohibition on the giving or conferring of any property or benefit of any kind, with the intention of influencing or affecting any others' candidature, vote or support. It also prohibits candidates from agreeing to receive benefit of any kind, with an understanding that their candidature will be influenced in any way. That is distinct from declarations of public policy or promises of public action, which candidates are allowed to make or endorse. One is a plan for what a candidate intends to do after being elected, the other is spending or receiving money in the electorate to buy votes before being elected.

Today I wrote to the Australian Electoral Commission requesting that the candidates, and certainly the Smart Energy Council, face a review into their actions. While it is for the Electoral Commission to determine breaches of section 326, I do not believe that the facilitation of gifts is a public policy nor a promise of public action. While those events are questionable in their own right, even more suspicions are raised upon further investigation. Given the similarity in both the projects funded and social media wording of each candidate's gift facilitation, one must wonder if there is any obvious link between the two events. Indeed there is such a link—namely, Simon Holmes à Court and Climate 200. The candidates are both being backed, financially and otherwise, by Climate 200 and they have both facilitated gifts from the Smart Energy Council. Unsurprisingly, it just so happens that Simon Holmes à Court is both the convenor of Climate 200 and a board member of the Smart Energy Council. [*Time expired.*]

#### FEDERAL ELECTION

**The Hon. TARA MORIARTY (00:06):** Saturday 21 May is Federal election day, which will be a chance for Australians to choose a positive direction and future for our country. When people go to the polling booths, in addition to grabbing their democracy sausage, they will have the opportunity to decide the next government and the future plans for a better Australia. Australians have had it tough these past few years with the drought, the bushfires, history-making floods and, of course, COVID and all its ramifications. In the past two years we have seen the very best of what communities can do when they stick together and support each other, especially in the toughest of times, rather than being divided.

Australians deserve a government that will have their backs during tough times so that nobody is left behind, and they deserve a government that will assist people to get ahead in life and build a successful future for themselves and their families. This Saturday is a chance for Australians to change the nation for the better. To do that, the best choice is to vote Labor. Here are a few reasons why. Under the current Federal Liberal-Nationals Government we have seen rising costs on almost everything: petrol, housing, power bills, groceries and much more. Inflation is at 5.1 per cent while wages have remained stagnant and more and more people are in insecure work. Labor knows that a better future relies on a stronger, broader, more inclusive and more sustainable economy. We want Australians to have the best chance to earn a decent living, keep up with the skyrocketing costs of living, make ends meet, secure more of the opportunities of a recovering economy and get ahead.

As we emerge—hopefully soon—from the pandemic, Australia is unprepared for the most pressing economic challenges: rising inflation, falling real wages and not having enough economic benefit to show for \$1 trillion of public debt. Even with the unemployment rate falling in welcome ways, we are not seeing the wages growth we need in a labour market characterised by skills shortages, underemployment and insecure work. That is a consequence of the Federal Liberal-Nationals Government's policy settings, which are deliberately designed to keep wages low.

Regarding health care, under the current Federal Liberal-Nationals Government it has become harder and more expensive to see a doctor. The results of deliberately running down Medicare and general practice mean that people end up in the local hospital, with patients presenting at emergency departments because they have no alternative. Almost a decade of Liberal-Nationals' neglect means that primary care is in crisis, particularly in outer suburbs and regional and rural communities. Demand for health care is skyrocketing. We need more GPs and better access to other healthcare professionals. Without this it will get even harder to see a GP, and the fees patients pay once they get there will be even higher.

It is only through fixing primary care that we will take the pressure off our hospitals. Labor believes that all Australians deserve access to universal, prompt and world-class medical care, and that no-one deserves to face a multi-year wait for vital treatments simply due to the cost. Labor built Medicare and it will always protect it—

and it needs protecting now. If the COVID-19 pandemic has taught us anything, it is how important it is to have access to quality health care when patients need it.

Families are also spending more and more on child care each year, where sometimes one person's daily income is set aside just for that. Over the past 12 months childcare costs have grown by 6.5 per cent. Since the Federal Liberal-Nationals Government came to power, childcare fees have increased by 41 per cent. That is unaffordable for most and just not worth it for some families, meaning that some children miss out on early learning and sometimes one parent is locked out of the workforce. A lack of support for adequate child care impacts families, kids, women and the community as a whole. Australia deserves a better system.

There are so many more key issues that people will consider when voting this weekend: protecting our environment; action on climate change; housing affordability; education; support for small business; better aged care—our system is currently in crisis, so we really need better aged care—national security; disability support and getting the NDIS back on track; making things here in Australia; and creating good skilled jobs. Those are some of the things that people will think about on the weekend. When they are thinking about them, the best answer—and if they want a better deal in all those areas—is to vote Labor.

### LAND CLEARING

**Mr JUSTIN FIELD (00:10):** We have a land clearing crisis in New South Wales, and that crisis is being driven by government policy aimed at vested landholder interests at the expense of good natural resource management and exacerbated by an almost total failure to uphold the law in this State. Between 2016, the year the Government tore up the Native Vegetation Act under its so-called biodiversity reforms, and 2019, the year the most recent figures are available, 173,000 hectares of land have been cleared of native vegetation in New South Wales as a result of infrastructure, housing development, forestry and agriculture. Of that, 63,300 hectares—more than one-third—was clearing of woody vegetation on private rural regulated land. Woody vegetation, of course, is a euphemism for forests and woodlands. On top of the 173,000 hectares, another 100,000 hectares of non-woody vegetation—otherwise known as native grasslands and ground cover—have been cleared on private rural regulated land. We know the extent of clearing because the environment department conducts an annual survey using highly technical satellite imagery as part of the Statewide Landcover and Tree Study program.

We can reasonably expect that the 2020 and 2021 land clearing results will be as bad, if not worse, because 150,000 hectares of land clearing approvals have been granted since 2018. Furthermore, in 2020 the agriculture Minister published a report stating that only 12,000 hectares of clearing that had occurred up until that point was clearing that was subject to an approval, so we know that 140,000 hectares of approvals, representing an area more than 500 times the size of the Sydney CBD, have not yet been acted on. This is a ticking time bomb for biodiversity in this State. Most worrying, clearing approvals for pasture expansion under the code, which is the deliberate thinning of forests to allow for grazing, make up over two-thirds of total approvals. That has grown more than five times since 2019, when the NSW Natural Resources Commission warned that, in that state, those provisions represented a "statewide risk to biodiversity".

We also know that the overwhelming majority of clearing on private rural regulated land—74 per cent in the latest report—was not subject to any land clearing approval, and was described in the reports as "unexplained clearing". Much of it related to grassland and ground cover. More worryingly, 47 per cent of woody vegetation cleared was also described as "unexplained". Challenged to explain the unexplainable, the Government established a working group of environment and Local Land Services staff. However, despite operating for about two years, it has given no explanation other than to say that the clearing could be the result of so-called allowable activities that do not require an approval or self-assessments.

Allowable activities include clearing for things like fence lines, farm buildings, environmental works, firebreaks and sustainable grazing. Very little clearing is allowed under the codes without an approval on rural regulated land, and the self-assessment provisions do not relate to woody vegetation. So unless there has been unprecedented breakout of new fencing and stockyard building in New South Wales in the past few years, we can be pretty confident that a substantial portion of tree clearing on rural regulated land is either outright illegal or done without the landholder obtaining the requisite approvals. Either way, under New South Wales law it is an offence that carries a maximum penalty of \$500,000 or up to \$1,000,000 for an individual if it causes substantial environmental harm.

But in the face of this obvious risk of ongoing and widespread illegal land clearing in New South Wales, how has the New South Wales environmental enforcement agency responded? As at late 2021, since 2017 only one prosecution had been completed, 38 penalty notices had been issued and 35 remediation orders had been made, none of which have been completed. Almost 600 advisory and warning letters have been sent. Land clearing is out of control. Clearly on the evidence—the Government's own data—much of it is outside the law. Approvals continue to be granted on an unprecedented scale, but this Government sends warning letters. The Nationals have



pushed out the scheduled three-year review of the failing codes, and the Liberals have let it happen. Under this Government the environment is being torn apart, and the Government does not seem to care about it.

#### DEATH OF SHIREEN ABU AKLEH

**The Hon. SCOTT FARLOW (00:15):** The death of Shireen Abu Akleh on 11 May is devastating and tragic, as is any death of a civilian in a region filled with violence and turmoil. I refer to a private member's statement made earlier today that was littered with inaccuracies and assumptions based on dubious media reports and statements from the Palestinian Authority. Laying blame solely on Israel before the results of an investigation are complete is highly irresponsible and a gross example of a member's clear bias against the Jewish State.

**The Hon. Penny Sharpe:** Point of order: Wide latitude is given in relation to adjournment speeches. However, if the honourable member wishes to make assertions about other members, he must do so by way of substantive motion.

**The PRESIDENT:** Indeed. I am not sure who the member is speaking about, but I caution him in that regard.

**The Hon. SCOTT FARLOW:** There is no reference to a member. Members have a responsibility to this Parliament and to the people of New South Wales to state only facts, not a perception of the facts. It is not appropriate for members of this House to be spreading information that is unable to be verified and may turn out to be gross disinformation. The facts are that no-one knows who shot the journalist and we await the results of an investigation into that tragic incident. It is grossly irresponsible for members of Parliament half a world away to speculate on the nature of the shooting, especially when it has had significant media coverage and is the subject of an ongoing investigation.

Our thoughts are with Ms Abu Akleh's family, friends and colleagues in the media. It is tragic to see a journalist shot when reporting on any story and doing her job. But until we know exactly what happened, members should cease the finger-pointing and blame games. Jumping to conclusions in the immediate aftermath of this tragedy is foolhardy and corresponds with a typical narrative of Israel being immediately blamed for any incident, especially when the facts have not been fully established. As stated by the Israeli defence Minister, Benny Gantz, the Israeli Government has made very clear its commitment to uncover the truth about the circumstances surrounding the death. The conducting by Israel, a democratic nation, of a proper investigation into the allegations surrounding this death should be welcomed by all members of the House.

Where was the condemnation of the slaughter by axe of three innocent Israelis who were celebrating Israel's independence day in a public park on a main street of a small city? That should have been noted. On 8 May two Palestinians were arrested in connection with those sickening axe attacks. Regrettably, the hasty condemnation of brutal attacks against innocent civilians was selective. As members should be aware, recently there has been a wave of murderous attacks throughout Israel by Palestinians or Israeli Arabs. In the past month alone, 18 Israelis have been killed at the hands of terrorists.

Regarding the Israeli police action during the funeral procession, I point out that the plans for the procession were coordinated by the Israeli police and the Abu Akleh family in advance of the funeral. It has been said that approximately 300 rioters arrived at the hospital in Jerusalem and prevented the loading of the coffin onto the hearse and its journey to the cemetery, which also had been organised and extensively planned. Instead, the driver of the hearse was threatened by the mob, which proceeded to carry the coffin in an unplanned procession on foot to the cemetery, contrary to the arrangements prepared by the family, which should have been respected.

The depiction of events given in this House, and specifically the use of the phrase "Israeli police attacking the funeral procession", is based on falsehoods. The instruction of the Israeli police was that the coffin be returned to the hearse—in coordination with the Ambassador of the European Union and the family—but the mob refused. It is wrong to say that the procession was attacked. The police acted to prevent the mob from taking the coffin. It is evident that it was a reasonable action to preserve the arrangements made by the family and to ensure the procession was conducted in a dignified manner. It is important for the facts to be established. I would hope that the House will take note of those facts when they are established.

#### WAGES AND INFLATION

**The Hon. COURTNEY HOUSSOS (00:19):** Families across New South Wales are feeling under increasing pressure. Particularly over the past few months, at weekend sport, school gates, pubs and backyard barbecues everyone seems to be talking about increasing prices of groceries, fresh food and other essential items. The recent announcement of a headline inflation rate of 5.1 per cent may have come as a shock to some, but for most families across New South Wales it simply reflected what they are experiencing every day. Today the seasonally adjusted wage price index was announced at 2.4 per cent. Although that is marginally higher than

usual, the shadow Treasurer, Jim Chalmers, said today the gap between wages and headline consumer prices was the biggest in 20 years. All of this is happening before interest rates are set to increase again in coming months.

Those figures mean that wages are not keeping pace with increasing prices and that workers are effectively getting a pay cut. That is not news to workers and families across New South Wales. The Liberals and Nationals might try to suggest that the recent strikes by our nurses, teachers, train drivers and paramedics are some kind of union conspiracy. In fact, they show the desperation of public sector workers right across New South Wales who are frustrated that their wages are not keeping up with their costs. At the current rate of inflation, in New South Wales a typical family on two incomes will have their pay cut by \$6,000 in real terms. Inflation is a secret tax eating away at the ability of working families to meet their obligations, pay their mortgages and get their kids through school. Rather than getting ahead, people in New South Wales are struggling to keep up.

But it gets worse. Instead of trying to help, the New South Wales Liberals and The Nationals are gouging our community as well. Analysis by our excellent shadow Treasurer, the Hon Daniel Mookhey, recently revealed that New South Wales is now the highest taxing State in Australia. Yes, the people of New South Wales now pay more tax than those in any other State or Territory. Over the past year, taxes and charges went up by 10 per cent, which equates to nearly \$5,000 for every man, woman and child in New South Wales. On top of that, in Sydney—the most tolled city on earth—tolls are locked in to increase by a minimum of 4 per cent each year. Fines and fees are up by 3.4 per cent. Everything is going up, except people's wages.

The Liberals and The Nationals like to point to the various voucher systems they have made available, but that approach is as out of touch as the Prime Minister Scott Morrison, who today tried to explain away low wage growth and the inflation gap by talking about global supply chain difficulties, the pandemic, wars in Europe, oil prices and other things out of his control. There he is again, never taking responsibility. It is true that after almost two years of closed borders, we have a record low unemployment rate of 4 per cent. But jobs are increasingly insecure. Many workers need several jobs simply to provide for themselves and their families.

We used to pride ourselves on the fact that anyone in Australia could work hard and receive a fair wage that would be enough to live on. That fundamental principle underpinned our pioneering industrial relations system almost 120 years ago. But with increasingly insecure work, rapidly increasing prices and stagnant wage growth, that is no longer the case. Luckily, we have the chance to change that. On Saturday Australians have the opportunity to vote for change and a better future by voting for an Albanese Labor government that believes that wages should increase faster than prices and that workers should have secure jobs to enable them to support their families.

### ANTI-PROTEST LAWS

**Ms SUE HIGGINSON (00:24):** I have the unenviable task of going last. Democracy and good governance rest upon a foundation of civil and political rights. The health and strength of a democracy is reflected in the way we treat and respect those acting peacefully for environmental and social justice. Over the past decade the Liberal-Nationals Coalition has taken a sledgehammer to our democracy by eroding tolerance, respect and the rights of those who are working selflessly for our benefit and change. In 2014 former Liberal Premier Mike Baird said to a private audience of the Minerals Council at their Mining Awards dinner, which was being hosted right here in the New South Wales Parliament, that he would "crack down" on civil disobedience and "throw the book" at people who engage in acts of civil disobedience to protect the environment and our planet.

Last month the Hon. Natalie Ward, the Minister for Metropolitan Roads, wrote an opinion piece that was published in *The Sydney Morning Herald*. Within it she explained that because she was concerned about the inconvenience to herself and the people on the roads one morning, she "immediately, through changes to regulation, was able to increase penalties for protesters who disrupted traffic on bridges and tunnels to up to two years' jail and/or a \$22,000 fine". This is notwithstanding the Human Rights Law Centre and other well qualified expert civil society legal institutions describing the measures as "draconian, unnecessary and disproportionate". The Minister called people who engage in acts of peaceful, direct—and inconvenient—protest as "selfish ... protesters" and called what they do "stupid".

In courts all across Australia I have represented hundreds of members of our community who have engaged in acts of civil disobedience where their actions to protect the environment have transcended a law—normally a summary offence such as trespass or obstruction. I stand here, hand on heart, and tell all that not one of those people I have represented is selfish, nor has what they have done been stupid. In all instances they have been outstanding, selfless members of our community. More often than not they are the volunteers of our community, the people who assist the disadvantaged amongst us in soup kitchens, homeless shelters, women's refuges and youth centres. They are the people who volunteer with Landcare groups and Clean Up Australia; they are wildlife carers; and they are also teachers, doctors, First Nations people, nurses, artists, students and church leaders. They are always really clever people. They have read the Intergovernmental Panel on Climate Change reports, they love

the planet and they have been listening to our scientific experts. Overwhelmingly, they are the people who actually believe in us as the lead actors in our democracy.

Every time I have represented such people the court remarks on their good character and their motivation for taking the action they did. In every single instance it is because they care about the world we are living in and they want to make it safer and better for everyone, for future generations and, of course, for those living things that have no voice whatsoever. Comparative analysis is a useful tool to see how a system is tracking. Last month, while this place was enacting draconian, intolerant and undemocratic laws, a judge in Kent, England, told of how he was "inspired" by protesters for holding a demonstration on a motorway. The protestors blocked traffic and caused inconvenience. They pleaded guilty, which in most cases is what a civil disobedient does, and while the judge fined them under the ordinary laws of Britain, not special draconian laws, he said:

I have heard your voices. They have inspired me and personally I intend to do what I can to reduce my own impact on the planet, so to that extent your voices are certainly heard.

It is the mark of a mature and functioning democracy when our courts and our parliaments understand how civil disobedience works and the role it plays, and respond with restraint and engaged tolerance. I finish with the words, again for comparative analysis, of Lord Hoffmann in a 2006 judgement in the House of Lords:

My Lords, civil disobedience on conscientious grounds has a long and honourable history in this country. People who break the law to affirm their belief in the injustice of a law or government action are sometimes vindicated by history. The suffragettes are an example which comes immediately to mind. It is the mark of a civilised community that it can accommodate protests and demonstrations of this kind.

**The PRESIDENT:** The House now stands adjourned.

**The House adjourned at 00:29 until Thursday 19 May 2022 at 10:00.**