MENTAL HEALTH BILL 2013

Committee

Resumed from an earlier stage of the sitting. The Chair of Committees (Hon Adele Farina) in the chair; Hon Helen Morton (Minister for Mental Health) in charge of the bill.

Clause 242: Provision of urgent non-psychiatric treatment: report to Chief Psychiatrist —

Committee was interrupted after the clause had been partly considered.

Clause put and passed.

Clauses 243 to 246 put and passed.

New clause 246A —

Hon STEPHEN DAWSON: I move —

Page 182, after line 31 — To insert —

246A. Psychiatrist to notify State Administrative Tribunal

A psychiatrist who makes an involuntary treatment order must notify the State Administrative Tribunal to appoint a guardian for the limited purpose of arranging legal representation for the patient as necessary.

In this amendment the opposition is again seeking an extra safeguard. We are saying that once a psychiatrist makes an involuntary treatment order—remember, it is an involuntary treatment order—it will, of course, reduce the patient's control over their life. We are saying that a guardian needs to be appointed for the limited purpose of arranging legal representation for the patient. I am keen to hear the minister's view.

Hon HELEN MORTON: The government does not support this amendment. The insertion of new clause 246A would result in a disproportionate and excessive process being undertaken for every involuntary patient. Not every involuntary patient requires a guardian, and lawyers can be arranged by other processes, including with the assistance of the Mental Health Advocacy Service and the patient's support persons.

Hon STEPHEN DAWSON: Presumably, in the case of an involuntary treatment order, the person's ability to represent themselves and to look after their own interests would be severely diminished, or might not even exist; otherwise, why would an involuntary treatment order be in place? If a psychiatrist makes an involuntary treatment order, presumably that patient would have no capacity to arrange their own legal representation—more than likely they would not; otherwise, why would an involuntary treatment order be made? I am not convinced that the bill contains other mechanisms to ensure that the measure we are seeking in this amendment will actually happen.

Hon HELEN MORTON: As I said, the suggestion that a person would have to go to the State Administrative Tribunal to have somebody represented is over the top for every involuntary patient. A number of opportunities occur throughout the bill for people to have representation, including from the advocacy service, from a nominated person or from a carer or friends; and somebody seeking legal representation can choose that in that process as well.

Hon SALLY TALBOT: I want to speak very strongly in favour of this amendment. I encourage members to look at it and to see it in its own right. I ask them not to look at it through partisan eyes but to look at it as a very genuine and well-motivated move to protect patients' rights. Look at the current situation that has all sorts of delays besetting the process. It is one of the perennial concerns of mental health advocates that everything takes so long. That is the situation we are living with. Obviously, we want to ensure, particularly when we come to a total rewrite of the act like the one we are considering now, that as many delays as possible are removed from the system. But—this is the key point—sometimes it is necessary to go through a process that is seen to be producing delays to get a better outcome for the patient. I put it to members in a very genuine sense that that is without doubt the cause of many delays currently in the system. If we take everything en bloc that we are arguing about, nobody on this side of the house would suggest that the majority of delays are caused by people with some kind of malevolent intent. That is clearly not the case. We live with delays when delays can be seen to result in a better outcome for the patient.

I have described the current situation in that we live with delays, and that we need to constantly put a restraint on ourselves by acknowledging that delays sometimes result in a better outcome for the patient. Alongside that, I ask the minister and members to consider what the State Administrative Tribunal actually does. SAT was set up not many years ago. It is not one of those cumbersome, bureaucratic structures that goes back half a century and clearly needs to be modernised. We have entities such as that and we are gradually working through the process of modernising them. That is clearly not the case with SAT. SAT has the capacity to respond quickly and in a

timely fashion. SAT is very well set up. I was a member of the Standing Committee on Legislation when we held a very lengthy inquiry into the way SAT operates; indeed, the inquiry was the statutory review of the act that was placed in the original legislation. We found that SAT needed very little tweaking, because it is a modern institution, and it is responding extremely well to the demands imposed on it by the community. That is exactly the sort of thing that is envisaged by Hon Stephen Dawson's amendment. Exactly that sort of thing would be able to be very competently handled by SAT. I really think that it is incumbent on the minister to tell us why it will not work. Hon Stephen Dawson has done a very thorough job of explaining why we think this amendment will work, but we need the minister now to tell us why she is just dismissing it. I hope that the minister is not just dismissing it, but she has not yet indicated to members of this chamber why she is not prepared to give this responsibility to SAT. It is an onerous responsibility, and it is obviously a responsibility that will demand that SAT responds in a timely way. If SAT does not respond in a timely way, Parliament will be the place in which we can address that and consider amendments and look at regulations so that we can very quickly change the situation. This amendment is very, very important. It is well targeted and well expressed, and the minister needs to give us a more detailed explanation as to why in her view it will not work.

New clause put and negatived.

Clause 247 put and passed.

Clause 248: Right to access medical record and other documents —

Hon HELEN MORTON: I move —

Page 183, line 25 — To delete "that" and insert —

that, as soon as practicable after the refusal,

I do not consider it appropriate for services to be able to unduly delay their responses to requests for medical records. Therefore, subclause (3)(a) states that the medical record must be provided as soon as practicable after the request is made. Subclause (3)(b) applies in cases in which a request has been refused for a reason set out in clause 249. The amendment that I have moved to clause 248 would have the effect of requiring the reasons for the refusal to be provided to the person as soon as practicable.

Hon SALLY TALBOT: I know that phrases like "as soon as practicable" are frequently used in legislation. Can the minister tell us what sort of ballpark figure she has in mind? Again, I point out that delays in accessing patient records is a perennial problem; it is constantly raised by advocates. It is, therefore, very important to have it clearly placed on the record what the minister is envisaging.

Hon HELEN MORTON: In the same way as "reasonable" is a legal phrase that can be understood, so too is "as soon as practicable". What I am saying is that access to a patient's records cannot be delayed for any unreasonable purpose. The circumstances of each case may be quite different; therefore, there is no way of putting in a specific time frame or anything like that. However, this amendment makes it very clear that it cannot be delayed.

Hon SALLY TALBOT: I have to press the minister on this one. If it came to the minister's attention, once this piece of legislation had been enacted, that it was still taking—let me choose a figure—eight weeks for someone to access their medical record, would the minister consider that that was acceptable?

Hon HELEN MORTON: We are struggling to find any practical reason why it would be delayed for eight weeks. I cannot think of any reason why it would be delayed for that length of time, even if the record, or part of the record, was located at another hospital. Given that the average length of stay for people with a mental illness is around 10 days, the idea of eight weeks is just unreasonable. I cannot think of any practical reason, off the top of my head, why it would be delayed for that long.

Amendment put and passed.

Clause, as amended, put and passed.

Clause 249: Restrictions on access —

Hon SALLY TALBOT: I will not detain the chamber for long on this clause, but we do have a couple of questions. The minister will be aware that the current provisions result in patients frequently being given records that are heavily redacted. Further, the current provisions often prevent a lawyer from reading a record that is not redacted, even though the lawyer might have a very coherent argument to say that they need to read an unredacted record in order to form a realistic assessment of how to advise the patient or how to act on the patient's behalf. I think the minister would also be aware that these kinds of debates frequently lead to protracted delays. Given that this clause is about restrictions on access, and given that the Labor opposition is not moving amendments to this clause, it is important that we have on the record the minister's view about these redactions. I am sure the minister is very familiar with the claim, which is frequently made, that there is an important sense

in which a patient and/or a patient's legal representative has the right to see an unredacted version of their record, particularly when—I know this will change under the new legislation—the Mental Health Review Board is hearing a case. If a patient or a patient's legal representative has access only to a heavily redacted record, they are essentially like a person who is trying to box with one arm tied behind their back. This is a live issue. I am sure that the minister is very much aware of how these points are argued within the sector. I would like the minister to comment on the timeliness of the availability of records, and also on the practice of heavily redacting records.

Hon HELEN MORTON: We have already talked about the timeliness. I know that the member would want me to talk about the issues as they currently exist, rather than what the act will provide. Clause 250 of the bill deals with providing access to a medical practitioner or a legal practitioner, so it quite categorically indicates that a medical practitioner can have access to medical records. Apart from some comments that I have heard from time to time about the Mental Health Law Centre not being able to get access to records because it requested them in a short time frame in the lead-up to a person's hearing at the Mental Health Tribunal—I recall that three days was brought to my attention on more than one occasion—no-one has ever suggested to me that the records they are accessing have been redacted. I do not know how common it is, because the issue has never been raised with me.

Hon SALLY TALBOT: I ask the minister to explain—I am happy for the minister to talk about the new provisions, but I think it would be handy to know how the minister judges it to make comparisons with the existing situation—who is responsible for keeping patient records in a state in which they can be handed over to a patient and/or a patient's legal representative?

Hon HELEN MORTON: The medical records of a patient are owned by—I do not know whether this is what the member is asking—the Department of Health. They are usually located at the facility to which the patient has recently been admitted.

Hon Sally Talbot: So it's not owned by the mental health service?

Hon HELEN MORTON: The mental health service is the Department of Health. The services provided in the public health service—in the state-run health service—are those of the Department of Health. There are times when a psychiatrist makes a judgement call—the same provision will apply in the bill—that information that has been provided to the psychiatrist in confidence will not be made available to other people. Clause 249, "Restrictions on access" has already been passed. There are also times when it is considered—perhaps because of a patient's psychosis, for example—that information in the record will not be passed on to the patient. There are other safeguards around that if that is the case.

Hon SALLY TALBOT: I am sure the minister will welcome the opportunity I am about to give her to explain to us what those other safeguards are. The minister has, in fact, just outlined that a record can be redacted and is redacted—and may be quite properly redacted—but we need to understand exactly the provisions that relate to those redactions and safeguards.

Hon HELEN MORTON: Information that is denied to a patient may be accessed and challenged by the patient's mental health advocate, by a lawyer and by the nominated medical practitioner. The decision to restrict information can be challenged before the Mental Health Tribunal under part 21, division 11, "Review of decisions affecting rights".

Hon SALLY TALBOT: I go back to my original question about who is responsible for keeping the records. The minister said that the Department of Health owns the records. She has not quite given me an understanding of whether the records are held in the general records section or a special mental health section of the Department of Health. Are there people whose responsibility it is to maintain those records? The reason I ask is not because I have an unhealthy curiosity about what happens in the bowels of the Department of Health with lots of pieces of paper; rather, it is because access to those records is a major issue. It is raised constantly by stakeholders and advocates in the mental health arena. The issue relates to the timeliness of receiving and the completeness of those records. Although the minister might not have specifically handled requests, comments or complaints about the redaction of material, she must be aware that there is a general perception in the sector that the answer to the question, "Who is responsible for maintaining the records?" is, "No-one" or "We're not sure". That is certainly how it has appeared on many occasions. I want the minister to put on the record her understanding of the process. If the minister gives her understanding of the process, the sector will have a much better chance of pursuing issues when there is a perception that things have gone wrong and that records are not being maintained in a satisfactory way.

Hon HELEN MORTON: We are talking about the bill at hand, which introduces the requirement that records be provided as soon as possible and that lawyers are given unfettered access under clause 250.

Hon SALLY TALBOT: I will not keep pushing the point. I have given the minister an opportunity to provide a fuller explanation, but it has not been forthcoming. Where in the bill is there a review mechanism of the provisions to place restriction on access?

Hon HELEN MORTON: As I indicated previously, information denied to the patient may be accessed and challenged by the patient's mental health advocate, a lawyer and a nominated medical practitioner. The decision to restrict information can be challenged before the Mental Health Tribunal under part 21, division 11, which is "Review of decisions affecting rights".

Hon SALLY TALBOT: I suppose it is a catch 22 question, is it not? If the information has not been made available, how can a person complain when they do not know what they do not know? Specifically, what are the complaint provisions about? Could they, for example, be about a lack of timely access to records or the redaction of material from a person's record?

Hon HELEN MORTON: There is an amendment on the notice paper to clause 320 to ensure that following unreasonable delay, a person can complain to the Health and Disability Services Complaints Office. A specific complaint can be made. If the member's concern is about the redaction of information —

Hon Sally Talbot: I am asking about both.

Hon HELEN MORTON: There is a specific complaint mechanism if there is unreasonable delay. If the Chief Psychiatrist decides that information should not be accessed, the Mental Health Tribunal can overturn that decision.

Hon SALLY TALBOT: Is the opportunity outlined in the legislation?

Hon HELEN MORTON: It is at clause 432 and is contained in that clause around rights.

Hon SALLY TALBOT: I have one final question on this clause. Has the minister given consideration to inserting a provision in the bill whereby information to which a patient does not have access could be marked that way when it is inserted in the file? There is an immediate commonsense reason for asking this question. It has been suggested to me by people who have far more direct experience in dealing with patient records than I have, that the delay is often caused by the time it takes to sift through a person's file, which may be quite large, and pull out the material to which the patient is not being given access. I realise that we cannot always predict what information is wanted for a patient down the track, but there could be a system whereby something that was of a sensitive nature, given that psychiatrists have experienced dealing with different kinds of mental illness, could perhaps be printed on different coloured paper so the person going through the file can immediately see what has to be assessed. Even if the decision is not immediately apparent, their attention will be drawn straight away by the obvious physical marking of material that was sensitive or detrimental to patients' wellbeing and that therefore should be withheld.

Hon HELEN MORTON: That is not something that would go into the legislation; it is a policy process already undertaken. There is a stamp made on a patient's medical file that indicates that something is confidential and not able to be disclosed—that already happens. It happens because personnel working in the health service who make that medical record available to other people are administrative staff, so the call has already been made about what information can or cannot be provided. As I say, it is a process that already happens.

Clause put and passed.

Clauses 250 to 252 put and passed.

Clause 253: Duty not to ill-treat or wilfully neglect patients —

Hon HELEN MORTON: I move —

Page 185, line 24 — To delete "$15 000" and insert —

$24 000

This is an amendment to increase the fine for a person found to be ill-treating or wilfully neglecting a patient. If a staff member of a mental health service is found to have breached the duty not to ill-treat or wilfully neglect patients, the penalty in the current draft is $15 000 and two years' imprisonment. This was subject to some debate in the other place and further submissions since that debate. The proposed amendment would increase the penalty to be in line with the penalty for the corresponding offence in the Declared Places (Mentally Impaired Accused) Bill 2013—that is, $24 000 and two years' imprisonment. I note that this offence is in addition to offences under the Criminal Code such as assault.

Hon STEPHEN DAWSON: I have to say that I am pleased by this amendment and that the penalties have been increased in this clause. I want to place on the record, though, advice received from the Mental Health Law Centre, which has pointed out that section 19, "Cruelty to animals", of the Animal Welfare Act 2002 states that a person must not be cruel to an animal and the penalty is a minimum of $2 000 and a maximum of $50 000 and

imprisonment for five years. It has been said in this place previously that animal cruelty is such a terrible thing that the maximum penalty has been set at $50 000 and someone could be imprisoned for five years. Yet, with this amendment today, when a patient is ill-treated or wilfully neglected under this legislation, it is being said that that is not as important as the mistreatment of animals—a $24 000 fine and two years' imprisonment is a lot different from $50 000 and five years' imprisonment. Does the minister see what I am saying? Under this legislation there is a $24 000 fine for ill-treating a patient, yet under another act, being cruel to an animal attracts twice as high a fine and a person could be imprisoned for almost two and a half times longer. There is a disparity there. Does the minister think $24 000 is enough, particularly when compared with the cruelty to animals provisions under the Animal Welfare Act?

Hon HELEN MORTON: I would note that the offence under this bill is in addition to offences under the Criminal Code, such as assault, which needs to be taken into account. I also provide the suggestion to the member that cruelty under the Animal Welfare Act is different to ill-treatment and wilful neglect. There is also a number of other mechanisms inside this bill that help protect a person from that, whereas, I guess, with cruelty, animals do not necessarily have a nominated person or a mental health advocate to work on their behalf et cetera. The member needs to understand that what is in this bill is in addition to offences under the Criminal Code such as assault.

Amendment put and passed.

Clause, as amended, put and passed.

Clause 254: Duty to report certain incidents —

Hon HELEN MORTON: I move —

Page 186, before line 1 — To insert —

(b) unlawful sexual contact with the person by a person who is not a staff member of a mental health service that occurs at a hospital; or

Clause 254 as it stands creates two reportable incidents, one which relates to unlawful sexual contact between a staff member of a mental health service and the person being treated in a mental health service. The proposed amendment seeks to expand the reporting requirement to include any unlawful sexual contact with a mental health patient that occurs at a hospital. This includes unlawful sexual contact by another patient.

Amendment put and passed.

Clause, as amended, put and passed.

Clauses 255 to 261 put and passed.

Clause 262: Restrictions on freedom of communication —

Hon STEPHEN DAWSON: I move —

Page 190, line 21 to page 191, line 2 — To delete the lines and insert —

(3) A psychiatrist cannot make an order under subsection (1) prohibiting, or limiting the extent of, a patient's right under sections 261(3)(c) or (d).

This clause as it currently stands is about the psychiatrist being able to limit the ability of a patient to communicate with their lawyer or mental health advocate if the psychiatrist believes it is in the patient's best interests or it is necessary because no other steps can be taken to reduce a serious risk to the patient's safety. I think it is an incredible power—to allow a psychiatrist to determine whether a person's legal practitioner, or indeed their mental health advocate, should be excluded from speaking to their client. It is certainly my understanding that this clause is not restricted to involuntary patients. Can the minister advise?

Hon HELEN MORTON: The clause applies to both voluntary and involuntary patients. Visits can be prevented to voluntary patients, but communication in other forms such as telephone or letter or some other form cannot be restricted. The reason is that the power to restrict a patient's visit from their lawyer or mental health advocate can only be invoked in rare cases when face-to-face contact would pose a serious risk to the safety of the patient's lawyer or advocate, and no other steps could reasonably be taken to reduce that risk. The psychiatrist may not limit a patient's right to contact their lawyer or advocate by other means, such as by telephone. The Mental Health Bill 2013 includes appropriate safeguards, including a requirement that any restriction on freedom of communication be reported to the Chief Mental Health Advocate within 24 hours. Further, the restriction may be challenged before the Mental Health Tribunal.

Hon STEPHEN DAWSON: I am very glad that the Chief Mental Health Advocate is being told something—at least in this instance. Minister, why would a voluntary patient be stopped from seeing their lawyer, though? Surely, if they are in there voluntarily, they are not at risk and should be able to see their lawyer. After the

refusal of them seeing their lawyer, is there a risk then of them suddenly being made involuntary and the other provisions applying?

Hon HELEN MORTON: These restrictions are put in place for the safety of the patient's lawyer, and when no other steps could reasonably be taken to reduce that risk. If a person was in a very fragile or volatile state but had not been made an involuntary patient at that stage, and if it was felt that there was a risk to the lawyer, those circumstances would be put in place. As I said, that person cannot be restricted from having telephone contact or other forms of contact, but person-to-person contact could be restricted.

Hon STEPHEN DAWSON: Minister, I can understand the bill seeking to restrict the communication of involuntary patients, but I really struggle to understand the restrictions on communication for a voluntary patient. Notwithstanding that, by way of this clause as it stands, the government is saying that a psychiatrist can prohibit a lawyer or mental health advocate from communicating with a patient. That will be based on the view of the psychiatrist, even if the patient is voluntary. I really have an issue with lawyers not being able to consult their clients, but I also really have an issue with the client not being able to consult their lawyer. I think as this stands, it is very, very broad, and I certainly, again, have a real issue with voluntary patients being captured by this clause.

Hon HELEN MORTON: I do not know whether the member picked it up, but I will repeat it again. This is not about not being able to consult; it is about it not being appropriate to have face-to-face contact with somebody. The person may be very unwell. Involuntary orders are not used when there is a less restrictive way of providing treatment to somebody, and one would not want to make that person involuntary on the basis of this because their lawyer can have contact with that person through other mechanisms. It is not that they cannot consult; they can consult, but they cannot have face-to-face contact.

Division

Amendment put and a division taken, the Chair (Hon Adele Farina) casting her vote with the ayes, with the following result —

Ayes (10)

Hon Alanna Clohesy	Hon Adele Farina	Hon Sally Talbot	Hon Samantha Rowe *(Teller)*
Hon Stephen Dawson	Hon Lynn MacLaren	Hon Ken Travers	
Hon Kate Doust	Hon Amber-Jade Sanderson	Hon Darren West	

Noes (18)

Hon Ken Baston	Hon Brian Ellis	Hon Col Holt	Hon Michael Mischin
Hon Liz Behjat	Hon Donna Faragher	Hon Peter Katsambanis	Hon Helen Morton
Hon Jacqui Boydell	Hon Nick Goiran	Hon Mark Lewis	Hon Phil Edman *(Teller)*
Hon Paul Brown	Hon Dave Grills	Hon Rick Mazza	
Hon Peter Collier	Hon Alyssa Hayden	Hon Robyn McSweeney	

Pairs

Hon Ljiljanna Ravlich	Hon Martin Aldridge
Hon Robin Chapple	Hon Jim Chown
Hon Sue Ellery	Hon Nigel Hallett

Amendment thus negatived.

Sitting suspended from 6.00 to 7.30 pm

The DEPUTY CHAIR (Hon Simon O'Brien): Members, having dealt with a proposed amendment, we now return to consideration of clause 262, "Restrictions on freedom of communication", and the question is that clause 262 stand as printed.

Clause put and passed.

Clauses 263 to 303 put and passed.

New clause 303A —

Hon STEPHEN DAWSON: I move —

Page 215, after line 5 — To insert —

303A. Off-label treatment of a child

(1) For the purposes of this section —

> ***off-label treatment*** means treatment contrary to the manufacturer's prescribing information as approved by the Therapeutic Goods Authority.
>
> (2) A parent has a right to veto the use of off-label treatment of his or her child, unless it has been determined by the Mental Health Tribunal that the parent is unfit to have the primary responsibility for the care and welfare of the child.
>
> (3) Any determination under subsection (2) must be reported to the Mental Health Advocate.
>
> (4) Any off-label treatment of a child must be reported to the Chief Psychiatrist.
>
> (5) This section applies notwithstanding anything to the contrary in this Act.

This is another issue that many members received representations on. My electorate office received a number of pieces of correspondence from parents who had a concern about this issue. I also received correspondence from the Mental Health Law Centre on the issue. In fact, I think all members would have received similar information in the joint submission to members of the Council endorsed by the Consumers of Mental Health WA, the Health Consumers' Council WA, the Mental Health Law Centre and Mental Health Matters 2. It is important to place on the record the comments of those organisations about this new clause, so I will read those comments for the benefit of members in this place this evening. The comments state —

> **Parental Veto of Off Label Treatments** — Under normal circumstances parents should have the capacity to veto 'off label' treatments of their children regardless of whether they are voluntary or involuntary patients. Although clauses 300 and 301 state that; '*in performing a function under this act … a person or body must have regard to the views of a child and their parents or guardian*' these clauses are superseded by clause 299 which states that *the* '*best interests of the child … [are the] … primary consideration*'. Therefore where the person or body responsible (often a treating psychiatrist) determines that a child would benefit from a treatment they can ignore the wishes of the child or the parents who oppose it.
>
> There are circumstances in which it may be appropriate to exclude parents and guardians from decisions relating to their child's treatment particularly if they have abused or severely neglected the child. However, these decisions to exclude parents from controversial 'off label' treatment decisions must not be made unilaterally by the child's treating psychiatrist. Exclusions of parents and guardians from these decisions must be made by an independent third party on substantial grounds.

As I have said, there is a great deal of concern about this issue, particularly because some treatments provided to children are not approved by the Therapeutic Goods Administration. There is a great deal of concern about that, and I think Hon Sally Talbot may also want to make a comment on this issue. Does the minister not think that parents should have the capacity to protect their children from potential harm from treatments that have not been approved for the proposed purpose?

Hon HELEN MORTON: We are talking about the requirements for off-label treatments in general. Off-label prescribing occurs when a treatment is provided for an indication, a route of administration or a patient group that is not included in the approved product information for that treatment. Off-label prescribing means that the Therapeutic Goods Administration has not approved the indication, route of administration or patient group; it does not mean that the TGA has rejected the indication. Commonly, the TGA has not been asked to evaluate the indication. Prescribing off-label treatment is unavoidable and very common, particularly for children. I note that the *Medical Journal of Australia* published an article in 2006 stating that up to 40 per cent of all hospital medications for adults and 90 per cent of all hospital medications for children are off label. One example is meloxicam, a non-steroidal anti-inflammatory drug used to treat rheumatoid arthritis in children. In 2013, an editorial in the *Australian Prescriber* noted that, in the case of meloxicam, studies have probably not been undertaken with the aim of applying to extend the indication to children. Another reason that an indication is not registered is that it is uncommon, so there is limited financial incentive for the drug company to undertake studies for registering an uncommon indication.

I will go a bit further and state the government's position in the bill. Clause 304 of the bill was inserted during consideration in detail in the other place. The requirement that the psychiatrist report his or her decision and reasons for the decision to provide off-label treatment to a child who is an involuntary patient will assist the Chief Psychiatrist in monitoring clinical practice and will facilitate increased public scrutiny around prescribing practices. Further, clause 531 now requires the inclusion of relevant statistics in the Chief Psychiatrist's annual report. In addition, the recording requirement in clause 304 will enable scrutiny by the Mental Health Advocacy Service, which will have access to involuntary patients' records.

Proposed clause 303A deals with voluntary patients. Clause 304 is limited to involuntary patients, because voluntary patients can only be provided with off-label treatment or any other treatment on the basis of informed

consent. The decision to prescribe or not prescribe off-label treatment to a voluntary patient is a matter for the child and their family, with the advice and guidance of the treating practitioner. Clinicians are not required to report the prescription of off-label treatment to voluntary patients who have physical health conditions. It is not clear why different rules should apply for mental health care. There is no right of parental veto specifically in relation to off-label treatment of a child in any health context. For voluntary patients, the consent of a parent or guardian is always required unless the child has decision-making capacity. The rules around when a child is capable of giving consent are established at common law and are reflected in the bill. Parents do not have a right of veto in relation to a child who is an involuntary patient. There is no requirement for consent to treatment.

I emphasise that off-label treatment for children is common in all health contexts, and the fact that it is off-label does not mean that the Therapeutic Goods Administration has rejected the treatment. Restricting the provision of an off-label treatment to children through proposed clause 303A(2) may limit a child's access to treatment that can facilitate their recovery, and may in fact be lifesaving.

Hon STEPHEN DAWSON: As the minister pointed out, proposed clause 303A reads, in part —

> (2) A parent has a right to veto the use of off-label treatment of his or her child, unless it has been determined by the Mental Health Tribunal that the parent is unfit to have the primary responsibility for the care and welfare of the child.
>
> (3) Any determination under subsection (2) must be reported to the Mental Health Advocate.
>
> (4) Any off-label treatment of a child must be reported to the Chief Psychiatrist.

The minister did not answer my earlier question, which was: why should parents not have the capacity to protect their children from potentially harmful treatments that have not been approved for the purpose proposed? That question is still left hanging. Why can parents not be involved in this issue? Why can parents not be involved in the decision-making on the treatment of their own children? We should be upfront; we should not be hiding behind things. Purely and simply, my amendment would ensure that parents have an involvement in this decision, and that can only make for a better mental health system.

Hon HELEN MORTON: Clause 301 makes it absolutely clear that regard must be had to the views of the parent or guardian. That is the first point I would make, and it applies whether the child is voluntary, has capacity, or is an involuntary patient. Regard must be had to the parent or guardian's views. Remembering that the default position in the bill is that it is considered that a child does not have capacity unless it is proven that the child has capacity, in circumstances where it is proven that a child has capacity, as in every other form of medicine, that child consents in their own right. When it is a child who wants to go on the pill, for example, and the parents do not want the child to go on the pill, if the child has capacity the child is able to go on the pill, if that is what the child is seeking.

Hon Kate Doust: Only over a certain age.

Hon HELEN MORTON: Capacity is capacity; it is not age related. We are not treating children in this context any differently. If they have capacity, notwithstanding that the default position is that children will not have capacity unless proven to have it, then the child's parents will not be allowed to overrule the child. If the child does not have capacity, the parents or guardians' position on it is the consenting position one way or the other. For involuntary children, it is different. An involuntary child's treatment is not dealt with any differently from that of an involuntary adult. The member continues to talk about potential harmful treatment, but I would go back to saying that 90 per cent of medical treatment provided to children involves off-label treatment.

Hon STEPHEN DAWSON: What would a child know about a specific drug, when the TGA may not have even made a decision on that drug? How can that child make an informed decision when the TGA has not made a decision on whether that drug should be used for the child? Purely and simply, I do not believe that they can. Can we justify how a child can make that decision when the TGA might not have made a decision on the drug?

Hon HELEN MORTON: That the TGA has not taken a position on the drug does not mean that it is saying that it could not make a decision on it; it has probably not been asked to make a decision, the clinical trials have not been sufficiently carried out, or people have not invested in clinical trials for children. Nevertheless, the experience and knowledge undertaken by child psychiatrists in the efficacy of the work is such that the psychiatrists would be able to explain that to the child. If the child has capacity—remember that point—then the child can consent.

Hon STEPHEN DAWSON: For my benefit, and for the benefit of members on this side of the chamber, when treatment is proposed to a child, what exactly is said to the child? What would the psychiatrist say to the child? Do they go through all the side effects? What exactly is told to the child before they can give informed consent on a drug?

Hon HELEN MORTON: The member might need to look back at clauses 19 and 20, which absolutely clarify what is involved in informed consent.

Hon STEPHEN DAWSON: I am looking at clauses 19 and 20. But in practical terms, I would still like to hear from the minister—it is a hypothetical—if a psychiatrist says to a child, "We want to treat you, and we are going to use X drugs", what is the child being told so that they can give informed consent? Obviously the child would not be read clauses 19 and 20 of the bill. Plainly and simply, in the English language, what will the child be told so that they can make an informed decision about their treatment?

Hon HELEN MORTON: Again, I would ask the member to look at clause 9, which makes it clear that the language and the form of communication has to be appropriate to the person who is being provided with the information. The member is asking me to give a hypothetical. I am not going to give a hypothetical. I am telling the member that the bill is absolutely explicit about, first, the capacity of a child, or not; and, secondly, the form in which that conversation needs to take place, and the elements that need to be covered under clauses 19 and 20.

Hon STEPHEN DAWSON: I could stand here all night and prosecute this case, and still the minister will not give me a satisfactory answer. So I do not propose to waste the time of the chamber any further. It is disappointing, though, that the minister will not give a satisfactory answer on this clause, and it is disappointing that she will not properly consider this amendment and properly ensure that the views of parents are taken into consideration under this bill when this treatment is proposed.

New clause put and negatived.

Clause 304 put and passed.

Clause 305: Terms used —

Hon STEPHEN DAWSON: I move —

> Page 218, after line 2 — To insert —
>
> or
>
> (iii) bodies/individuals undertaking medical and epidemiological research; or
>
> (iv) bodies/individuals undertaking apprehension and seizure services; or
>
> (v) welfare services/individuals contracted to provide services to the mental health service;

I note that the minister has on the same supplementary notice paper an amendment that is very similar to the one I have moved, except that she proposes to insert a new subparagraph (iii), which states —

> the carrying out of medical or epidemiological research relating to mental illness;

Obviously the minister is trying to meet me halfway, I think, or has certainly taken on board some of the debate that has taken place previously. But before I go any further, can I ask the minister why she objects to subparagraphs (iv) and (v) of my amendment?

Hon HELEN MORTON: In addition to medical and epidemiological research, which is included in the amendment that I am proposing, the member's amendment includes apprehension and seizure services, and welfare services. The inclusion of apprehension and seizure services is not supported. The member's proposed amendment is too broad, in that it is not limited to the exercise of powers under the Mental Health Act. Persons may be apprehended and items seized in a range of contexts, many of which have nothing to do with mental health. I also consider the amendment to be unnecessary. Services provided specifically for people who have a mental illness are already within the scope of the complaints process in the bill by virtue of the definition of "mental health service" in clause 305. If a particular action is permissible only under the provisions of the bill, it follows that the action is specific to people who have, or may have, a mental illness. This is because the powers in the bill may be exercised only in connection with the treatment and care of persons who have, or may have, a mental illness. This means, for example, that the carrying out of a transport order is a service that could be complained about under the bill.

The insertion of an express reference to welfare services is unnecessary, because such services are already covered by the definition in clause 305. It is true that welfare services are expressly mentioned in the equivalent clause of HaDSCO's primary legislation, the Health and Disability Services Complaints Act 1994. That is because the primary legislation is otherwise concerned with health services of a clinical nature. Without that specific mention, welfare services would be outside the scope of that legislation. In contrast, the definition used in clause 305 of this bill has been drafted broadly to include both clinical and non-clinical services. This approach has been modelled on the complaints process set out in part 6 of the Disability Services Act.

Hon STEPHEN DAWSON: I think it is unfair that the minister thinks that this amendment is unnecessary, because the minister has actually proposed an amendment, which we will debate next, in which she admits that at least one part of my amendment is necessary.

Hon Helen Morton: Part of it; not the whole of it.

Hon STEPHEN DAWSON: So the minister should probably choose her words a bit more carefully, because she is actually contradicting herself when she says the whole amendment is unnecessary. Nonetheless, I hear the minister's point. The amendment stands in my name, and I will not make any further comments.

Amendment put and negatived.

Hon HELEN MORTON: I move —

Page 218, after line 2 — To insert —

(iii) the carrying out of medical or epidemiological research relating to mental illness;

We have picked up on those aspects of the amendment proposed by Hon Stephen Dawson that we think are necessary for the bill.

Amendment put and passed.

Hon HELEN MORTON: I move —

Page 218, after line 10 — To insert —

provide, in relation to a mental health service, includes to carry out;

I have moved this amendment for the same reasons as I have outlined for the previous amendment.

Hon STEPHEN DAWSON: I do not propose to stay on this for too long, but can the minister explain to me the reason for that particular amendment?

Hon HELEN MORTON: It was recommended by parliamentary counsel, because it will make sense of the reference to "carrying out" in terms of the previous amendment that I moved.

Amendment put and passed.

Clause, as amended, put and passed.

Clauses 306 to 315 put and passed.

Clause 316: Representative of person with mental illness or carer —

Hon STEPHEN DAWSON: I move —

Page 226, lines 9 and 10 — To delete —

is not a relative of the complainant

Again, I do not propose to spend too much time on this amendment, but I ask the minister whether she could give us a reason why this amendment is not needed.

Hon HELEN MORTON: It is not supported because clause 316(3) duplicates section 20 of the Health and Disabilities Services (Complaints) Act. The clause quite properly seeks to encourage the involvement of close family members in the complaints process. It is inevitable that some close family members will have a financial involvement in their loved one's treatment and care. For example, many parents pay for their child's treatment. These natural links should not prevent the close family member from supporting their loved one through the complaints process. For instance, a mother of a patient may have been asked to pay for a service that both she and the patient considered was provided unreasonably, as described in clause 320(2)(b).

Amendment put and negatived.

Clause put and passed.

Clause 317: Representative must not be paid —

Hon HELEN MORTON: I wish to take the call, but I think I am wrecking the house!

Hon Stephen Dawson: Destroying the joint!

The DEPUTY CHAIR (Hon Simon O'Brien): Order! The symbol of authority of the house has been dislodged and now replaced! In days gone by, people could probably have had their heads chopped off for that, but if we are all composed now, would the minister care to move her amendment.

Hon HELEN MORTON: I move —

Page 226, line 22 — To delete "who is" and insert —

and is

The DEPUTY CHAIR: The question is that the words proposed to be deleted be deleted.

Amendment (deletion of words) put and passed.

The DEPUTY CHAIR: The question now is that the words proposed to be inserted be inserted.

Hon STEPHEN DAWSON: I am sorry; I sought the call that time, Mr Deputy Chair.

The DEPUTY CHAIR: Does Hon Stephen Dawson have a view on whether the words proposed to be inserted be inserted?

Hon STEPHEN DAWSON: I do indeed. I seek some comments from the minister on why this insertion needs to happen in the bill.

Hon HELEN MORTON: It is a grammatical thing that parliamentary counsel required us to make some changes over.

Hon STEPHEN DAWSON: Mr Deputy Chair, I think I was ahead of myself. I actually thought we were on amendment 25/317, but are we still on amendment 24/317?

The DEPUTY CHAIR: Indeed.

Hon STEPHEN DAWSON: Then excuse my last comment; I did not mean to stand up and seek the call.

The DEPUTY CHAIR: We cannot undo that which has been done.

Hon STEPHEN DAWSON: Absolutely! Please accept my apology, though—the Deputy Chair can do that.

The DEPUTY CHAIR: No apology is necessary. The question is that the words proposed to be inserted be inserted.

Amendment (insertion of words) put and passed.

The DEPUTY CHAIR: Minister, would you like to move the second amendment in your name.

Hon HELEN MORTON: I move —

Page 226, after line 24 — To insert —

(e) a person who is being paid through a funding arrangement with government to provide free advocacy services and is representing a person who has, or may have, a mental illness or a carer of a person who has, or may have, a mental illness.

Hon HELEN MORTON: An amendment was made in the other place ensuring that a legal practitioner who is being paid through a funding arrangement with the government to provide a free legal service and who is representing a person under clause 317 can be paid. The proposed amendment has the same effect, but in relation to a person who is not a mental health advocate within the meaning of the bill providing advocacy services.

Hon Sally Talbot: Your moment has come!

Hon STEPHEN DAWSON: "My moment has come", says Hon Sally Talbot. Indeed! I am very happy to support this amendment. I am very happy that the minister listened to the concern raised by not only the opposition, but also a number of non-government organisations whose representatives contacted us and sought this amendment. I think it is a sensible amendment and I am very happy to give our support to it.

Amendment put and passed.

Clause, as amended, put and passed.

Clauses 318 and 319 put and passed.

Clause 320: Who and what can be complained about —

Hon HELEN MORTON: I move —

Page 228, line 18 — To insert after "by" —

delaying,

Again, this amendment was in response to some concerns that were raised about the potential delaying of providing information.

Amendment put and passed.

Clause, as amended, put and passed.

Hon STEPHEN DAWSON: I will not be moving amendment 76/324 standing in my name on the supplementary notice paper, so perhaps, in light of that, the Deputy Chair may wish to extend the question.

Clauses 321 to 327 put and passed.

Clause 328: Preliminary decision by Director —

Hon HELEN MORTON: I move —

Page 234, lines 13 and 14 — To delete the lines.

This proposed amendment to clause 328 is to delete subclause (14) because of a drafting issue brought to my attention since the debate in the other place. The rationale is that subclause (14) inadvertently contradicts subclauses (10) and (12), and in any case duplicates clause 331(1). The appropriateness of this amendment has been confirmed with the Health and Disability Services Complaints Office, and I would like to thank Hon Nick Goiran for bringing it to my attention.

Amendment put and passed.

The DEPUTY CHAIR (Hon Simon O'Brien): Members, I might also observe that when you are moving an amendment, if you wish to formally move the amendment and explain straightaway your purpose, that is fine and then I can formally put the question after you have done that. If members feel more comfortable doing that, please feel free.

Clause, as amended, put and passed.

Clauses 329 to 336 put and passed.

Clause 337: What Director must do on completing investigation —

Hon HELEN MORTON: I move —

Page 243, line 29 — To delete the line and insert —

so many of those people as the Director considers appropriate.

This clause sets out what the director of the Health and Disability Services Complaints Office must do on completing an investigation. Before requiring remedial action from the respondent or another person, the director must consult with the respondent or that other person. Also, if any action that the director considers ought to be taken to remedy the matter is likely to have an impact on people other than the respondent or that other person, subclause (4) in its current form requires the director to consult with a group of those people. The proposed amendment is to replace the term "a group of those people" with "so many of those people as the director considers appropriate", which is easier to interpret. Again, I thank Hon Nick Goiran.

Amendment put and passed.

Clause, as amended, put and passed.

Clauses 338 to 359 put and passed.

Clause 360: Documents to which access is restricted —

Hon HELEN MORTON: I move —

Page 262, line 29 — To delete "section 249(1)(a)." and insert —

section 249(1)(a) or (b) or (3).

The bill enables the psychiatrist to restrict a patient's access to information on specified grounds. It is intended that mental health advocates be permitted to view restricted information but be prohibited from divulging it to the patient. However, as currently drafted, the prohibition on disclosure by advocates applies to some forms of restricted information but not others. The proposed amendment will ensure that the relevant processes apply consistently to all forms of restricted information.

Hon SALLY TALBOT: Minister, why is there no cross-reference here to clause 42, which relates to the provision of information contained in referral to person referred? We raised with the minister the issue about oversight. As I recall, we got into a discussion about what if the information were malicious or vexatious. I raised this in the briefing but we could not find an explanation for why there is no cross-reference. I am interested to find out whether the minister has given this any further thought since the briefing. Perhaps the minister can enlighten us on that before I go on.

Hon HELEN MORTON: The service has to consider that same information twice. It is like a check and a balance. The restriction in clause 42 begins and ends at the point of referral. After that point, information may

be restricted only under clause 249. That two-stage process will ensure that a snap judgement to withhold information under clause 42 at the point of referral subsequently needs to be reconfirmed under clause 249, when the decision can be made in a more considered and deliberate manner. This may involve, for example, following up with the person who initially provided the information to ensure that the restriction even was, but is still, justified.

Amendment put and passed.

Hon HELEN MORTON: I move —

Page 263, lines 4 and 5 — To delete "section 249(1)(a); and" and insert —

section 249(1)(a) or (b) or (3), as the case requires; and

This amendment merely corresponds to the amendment I have just moved.

Amendment put and passed.

Clause, as amended, put and passed.

Clause 361: Disclosure by mental health advocate —

Hon HELEN MORTON: I move —

Page 263, line 19 — To delete "section 249(1)(a); and" and insert —

section 249(1)(a) or (b) or (3); and

Amendment put and passed.

Clause, as amended, put and passed.

Clauses 362 to 378 put and passed.

Clause 379: Terms used —

Hon STEPHEN DAWSON: I move —

Page 273, lines 7 and 8 — To delete "direction or declaration" and insert —

direction, declaration or recommendation

On page 273 of the bill, part 21 deals with the Mental Health Tribunal and clause 379, "Terms used". The opposition believes that recommendations can be powerful directives or orders and, obviously, although they do not have the mandatory consequences that a direction or declaration has, they are important, as recommendations are often followed. We believe it is important that the tribunal has the ability to look at recommendations, because if a recommendation is taken on, it will have the same force as a directive and maybe a declaration. Therefore, I have sought to move this amendment in my name.

Hon HELEN MORTON: The government does not support this amendment. Including the word "recommendation" in the definition of "decision" would have a dual effect. First, it would mean that recommendations by the tribunal about a patient's treatment, support and discharge plan would be binding on the patient's psychiatrist; second, a recommendation by the tribunal would be appealable to the State Administrative Tribunal. The Mental Health Tribunal is not in the best position to make binding directions regarding the specifics of a patient's treatment and care, as the members constituting the tribunal have not had the benefit of assessing, examining and working closely with the patient. For example, it would be undesirable for a panel comprising a lawyer, a psychiatrist and a community member, all of whom have known the patient for only 30 minutes, to instruct the treating psychiatrist to increase the dosage of drug A or reduce the dosage of drug B. The same applies in relation to an appeal to the State Administrative Tribunal, whereby the presiding member is unlikely to be a psychiatrist and may have limited knowledge about clinical aspects of mental illness. Treatment can be changed via the independent second opinion process and through the review powers of the Chief Psychiatrist.

Amendment put and negatived.

Clause put and passed.

Clauses 380 to 385 put and passed.

Clause 386: Initial review after order made —

Hon STEPHEN DAWSON — by leave: I move —

Page 276, lines 21 to 24 — To delete the lines.

Page 277, after line 9 — To insert —

and

(c) there is no new relevant evidence or change in the circumstances regarding the patient's detention.

Essentially, this is about involuntary treatment orders and the review after an order is made. We believe that new evidence can often come to light after a tribunal review and, given the obligations to the patient in the objects of and the charter in the bill, this must be provided for in this bill. I will not spend too much time on this, but we believe these amendments make sense and would make for a better bill. I am keen to hear the minister's response and I will not spend too much time on this this evening.

Hon HELEN MORTON: Although I will address the amendments one at a time, I will run one straight after the other. The changes to lines 21 to 24 on page 276 of the bill are not supported. Clause 386 needs to be read in conjunction with clause 388, under which a person is deemed to have been an involuntary patient continuously provided that any gap between orders does not exceed seven days. Without this seven-day rule, the psychiatrist could avoid external scrutiny by making a person voluntary for a brief period before issuing a new order. Clause 388 therefore establishes an important safeguard; however, going further by removing the continuity requirement altogether would have undesirable consequences. For example, when there is a substantial gap between orders, the initial mandatory review would have to take place soon after the second order was made. The brief period between making the order and the mandatory review would make it difficult to ascertain the effect of the involuntary treatment regime on the person's health. In saying this, I note that the beneficial effects of treatment often take several weeks to become apparent. Finally, there is nothing preventing the patient, a support person or an advocate from requesting a review at any time under clause 390 or the tribunal undertaking a review on its own initiative under clause 391.

Again, the amendment to page 277 after line 9 is not supported. In addition to the mandatory, initial and periodic reviews required under clauses 386 and 387, the tribunal may also conduct a review on application under clause 390. A patient support person or mental health advocate requesting a review can include new information or describe a change in circumstances in the application. In the absence of such an application, it is difficult for the tribunal to determine whether there is new evidence or a change in circumstances. This means that the proposed amendment would be unworkable. In the event that the tribunal was made aware of salient information in the absence of an application for review, the tribunal could conduct a review on its own initiative under clause 391, as I have just said. The Mental Health Advocacy Service can assist the patient in upholding their rights to request a review.

Amendments put and negatived.

Clause put and passed.

Clause 387: Periodic reviews while order in force —

Hon STEPHEN DAWSON: I do not propose to move the amendment standing in my name.

Clause put and passed.

Clauses 388 to 392 put and passed.

Clause 393: Parties to proceeding —

Hon HELEN MORTON: I move —

Page 282, lines 19 to 22 — To delete the lines and insert —

(b) if the proceeding relates to an application made under section 390 and the applicant is not the involuntary patient — the applicant; and

The proposed amendment to clause 393 is the first of a number of amendments seeking to remove the psychiatrist from the list of parties to Mental Health Tribunal proceedings when the tribunal is exercising certain functions. I am moving the amendment in response to suggestions from the Mental Health Law Centre (WA) Inc and the president of the Mental Health Review Board. The purpose of a review of involuntary status is not to determine culpability or provide for the defence of a decision made and action taken; it is to ascertain whether the person needs to remain an involuntary patient. Identifying the patient's psychiatrist as a party to the proceedings could create the impression of an adversarial relationship between psychiatrist and patient, and an outcome that could damage a critical therapeutic relationship. This amendment is not about whether the psychiatrist needs to attend the hearing. Clause 460 already empowers the tribunal to compel the psychiatrist or any other relevant person to attend a hearing and provide information. The psychiatrist will still be a party if he or she applied for the hearing.

Amendment put and passed.

Clause, as amended, put and passed.

Clause 394 put and passed.

Clause 395: What Tribunal may do on completing review —

Hon STEPHEN DAWSON: Clause 395 on page 283 deals with what the tribunal may do on completing a review. Members on this side say that it is okay to do a review, but what will be the actions or the consequences of a review? If a review is done and nothing happens, or there is no power to make something happen, having a review is pointless and is just window-dressing. That is why I move —

Page 284, lines 5 to 7 — To delete the lines and insert —

(3) The Tribunal may make an order to give a direction under subsection (1) in relation to an involuntary patient's treatment, support or discharge plan, and may make —

Hon HELEN MORTON: For the reasons that I mentioned when talking about the proposed amendment to clause 379, this is not supported by government. The Mental Health Tribunal is not in the best position to make binding directions regarding the specifics of a patient's treatment and care, as the members constituting the tribunal have not had the benefit of assessing, examining and working closely with the patient. The Mental Health Tribunal can decide that the person is no longer required to be involuntary.

Amendment put and negatived.

Clause put and passed.

Clause 396 put and passed.

Clause 397: Application of this Division —

Hon HELEN MORTON: I move —

Page 284, line 27 — To delete "***order***) —" and insert —

order) that is or was in force —

I will shortly move a number of amendments intended to empower the Mental Health Tribunal to consider the validity of a treatment order that is no longer in force. This proposed change is in response to submissions by the Mental Health Law Centre and several other stakeholders. I would like to again acknowledge Hon Nick Goiran for his input. Retrospective consideration of a treatment order no longer in force could illuminate a question of law that has practical implications for other patients, current and future. Aggrieved persons would have another avenue for having their position officially validated in addition to having recourse to the Health and Disability Services Complaints Office. The proposed amendments to clauses 397 and 398 are necessary if the latter is supported.

Amendment put and passed.

Clause, as amended, put and passed.

Clause 398: Declaration about validity of treatment order —

Hon HELEN MORTON: I intend to move —

Page 285, line 5 — To delete "section 400" and insert —

section 400(1)

As I indicated, this is one of a number of amendments I will move to ensure that the aggrieved person would have another avenue for having their position officially validated in addition to having recourse to the Health and Disability Services Complaints Office.

Hon SALLY TALBOT: As I read it, that amendment is contingent on an amendment we have not yet considered, at 34/400.

The DEPUTY CHAIR (Hon Liz Behjat): That is at line 24 on page 286. That is at clause 400. We are dealing with clause 398.

Hon HELEN MORTON: I cannot remember the technical phrase for it. We will have to "park" this clause and come back to it. Perhaps the Clerk could remind me of the word.

The DEPUTY CHAIR: Does the minister want to defer consideration of this clause until after clause 400?

Hon HELEN MORTON: Until after clause 400.

Further consideration of the clause postponed until after consideration of clause 400, on motion by Hon Helen Morton (Minister for Mental Health).

[Continued on page 6679.]

Clause 399 put and passed.

Clause 400: Application for declaration —

Hon STEPHEN DAWSON: In light of the minister's amendments to clause 400, I will not move the amendment standing in my name.

Hon HELEN MORTON: I move —

Page 286, line 24 — To delete "patient;" and insert —

patient or the person who was the subject of the treatment order;

I also indicate that we will need to deal with new clause 401A before we can go back to postponed clause 398.

I have previously made comments about aggrieved persons having another avenue to have their position officially validated in addition to having recourse to the Health and Disability Services Complaints Office.

Amendment put and passed.

Hon HELEN MORTON: I move —

Page 286, line 27 — To delete "patient;" and insert —

patient or of the person who was the subject of the treatment order;

I move this amendment for the same reasons I moved the previous amendment.

Amendment put and passed.

Hon HELEN MORTON: I move —

Page 286, after line 30 — To insert —

(2) An application cannot be made under section 398(1) in respect of a treatment order that ceased to be in force more than 6 months ago unless, in the Tribunal's opinion, the applicant shows good reason for the delay.

Proposed subclause (2) is intended to ensure that people who are seeking review of the validity of a past treatment order do so in a timely fashion. The proposed time limit is six months; however, the tribunal will have the power to extend this time. The time frame reflects the fact that a person who has recently been discharged from an involuntary treatment order may not be in the best position to seek redress immediately. It also reflects the reality that the reliability of evidence and the ability to call relevant witnesses diminish over time and, as such, the legislation should encourage applications to be submitted in a reasonably timely fashion.

Hon SALLY TALBOT: I ask the minister to clarify why there is a time limit of six months in proposed subclause (2). Does that time limit of six months apply to the previous half a dozen amendments through which she has inserted a degree of retrospectivity in the sense that we are now talking about somebody who is no longer the subject of a treatment order but was the subject of a treatment order?

Hon HELEN MORTON: The answer is yes.

Hon SALLY TALBOT: The minister has said that it will be at the discretion of the Mental Health Tribunal. Where does it specify that the time limit will be at the discretion of the tribunal?

Hon HELEN MORTON: It is in the amendment, which states that, in the tribunal's opinion, the applicant shows good reason for the delay.

Hon SALLY TALBOT: I ask the minister to give us her understanding of what might constitute a good reason. Why has that phrase been used?

Hon HELEN MORTON: Mostly, the reason would be that the person had been ill for a reasonable amount of time, and we want to give them sufficient time to get over that acute phase of their illness so that they can carry through with this if that is what they wish to do.

Hon SALLY TALBOT: Does the reference to "patient or the person who was the subject of the treatment order" apply to both voluntary patients and involuntary patients?

Hon HELEN MORTON: It makes no difference whether the patient is or has been an involuntary patient or is an inpatient or an ex-patient. Whatever the patient's status is at the time, the person can still follow through on that action.

Amendment put and passed.

Clause, as amended, put and passed.

New clause 400A —

Hon HELEN MORTON: I move —

Page 286, after line 30 — To insert —

400A. Parties to proceeding

The parties to a proceeding under this Division are —

(a) the involuntary patient or the person who was the subject of the treatment order; and

(b) if the proceeding relates to an application made under section 398(1) and the applicant is not the involuntary patient or the person who was the subject of the treatment order — the applicant.

Proposed new clause 400A sets out the parties to a proceeding about the validity of an involuntary treatment order. In general terms, the parties are the involuntary patient or the person who was the subject of the treatment order and, if another person was the applicant, the applicant.

Hon STEPHEN DAWSON: I am intrigued, minister. Obviously, this is a new clause in the bill. Why has the minister decided to insert this new clause? Why is this necessary, if she does not mind explaining it to us?

Hon HELEN MORTON: Every other reference to the Mental Health Tribunal sets out who the parties are for the areas that we are talking about. This is about consistency because there was no provision about who the parties are.

New clause put and passed.

Clause 401: Failure to comply with this Act —

Hon HELEN MORTON: I move —

Page 287, line 3 — To insert after "to be" —

or to have been

The proposed amendment will bring the terminology in line with the other changes to which I have referred for the consideration of the validity of a treatment order no longer in force.

Amendment put and passed.

Hon HELEN MORTON: I move —

Page 287, line 4 — To insert after "order is" —

or was

This amendment is consistent with the changes that have been made. I indicate that I appreciate the patience of the chamber.

Amendment put and passed.

Hon HELEN MORTON: I move —

Page 287, line 5 — To insert after "been" —

or was

This amendment is for the same reason.

Amendment put and passed.

Hon HELEN MORTON: I move —

Page 287, line 14 — To insert after "been" —

or were

I move this amendment for similar reasons to those outlined above.

Amendment put and passed.

Clause, as amended, put and passed.

New clause 401A —

Hon HELEN MORTON: I move —

Page 287, after line 15 — To insert —

401A. Discretion not to decide on validity of treatment order no longer in force

(1) In this section —

question of law includes a question of mixed fact and law.

(2) The Tribunal is not required to decide whether a treatment order that was in force was valid or invalid, but may do so if satisfied that the matter raises —

(a) a question of law; or

(b) a matter of public interest.

The insertion of new clause 401A will provide for retrospective consideration of a treatment order that is no longer in force. New clause 401A would empower the Mental Health Tribunal to consider the validity of a treatment order that is no longer in force if the matter raises a question of law or is a matter of public interest. This not only provides an aggrieved person with another pathway for having their position officially validated—in addition to having recourse to the Health and Disability Services Complaints Office—but also may have practical implications for other patients both current and future.

Hon STEPHEN DAWSON: I am keen to know why the minister has all of a sudden moved this amendment. Where has it come from? Did it come about because an interest group suggested that it was needed in the bill or was it an oversight? What is the reasoning for the inclusion of this new clause?

Hon HELEN MORTON: Yes, there was representation from the Mental Health Law Centre. Equally, there was representation from Hon Nick Goiran, who has left the chamber on urgent parliamentary business. We also took note of a particular case in the Supreme Court.

Hon STEPHEN DAWSON: If this proposed new clause makes the bill a better bill, we on this side of the house are very happy to support it. If, as the minister said, this came about not only as the result of a suggestion of Hon Nick Goiran's but also because the sector sought an amendment along these lines —

Hon Helen Morton: Not the sector; just the Mental Health Law Centre.

Hon STEPHEN DAWSON: That is fine; that is part of the sector. I am trying to give the minister some credit! The minister listened to a concern voiced by the Mental Health Law Centre. I am very happy to place on the record that the opposition is happy to support the new amendment.

New clause put and passed.

Postponed clause 398: Declaration about validity of treatment order —

Hon HELEN MORTON: I move —

Page 285, line 5 — To delete "section 400" and insert —

section 400(1)

As Hon Sally Talbot indicated, the subsequent clauses relate to the information that we discussed and the amendments that we have just passed. The amendments to clause 398 reflect changes to clause 400; namely, subclause (2) has been inserted and there is a need to refer to subclause (1).

Amendment put and passed.

Hon HELEN MORTON: I move —

Page 285, line 6 — To insert after "order is" —

or was

This amendment is for the same reasons.

Amendment put and passed.

The DEPUTY CHAIR (Hon Liz Behjat): Is Hon Stephen Dawson moving the amendment standing in his name?

Hon STEPHEN DAWSON: I think I already indicated, Madam Deputy Chair, that I would not be moving the amendment to clause 398 standing in my name.

The DEPUTY CHAIR: I think you indicated that you were not moving amendment 83/400.You did not indicate whether you would move amendment 82/398.

Hon STEPHEN DAWSON: If I have not done so already, excuse me. I will not be moving it.

Postponed clause, as amended, put and passed.

Clauses 402 and 403 put and passed.

Clause 404: Parties to proceeding —

Hon HELEN MORTON: I move —

Page 288, lines 14 to 16 — To delete the lines and insert —

(b) if the applicant is not the long-term voluntary inpatient — the applicant; and

This is the second of several amendments seeking to remove the psychiatrist from the list of parties to Mental Health Tribunal proceedings, where the tribunal is exercising certain functions. This amendment is made for the same reasons as the amendment to clause 393.

Amendment put and passed.

Clause, as amended, put and passed.

Clauses 405 to 408 put and passed.

Clause 409: Parties to proceeding —

Hon HELEN MORTON: I move —

Page 290, line 31 — To delete the line and insert —

(b) the applicant; and

This amendment brings the drafting in clause 409 into line with other clauses specifying parties to proceedings.

Amendment put and passed.

Clause, as amended, put and passed.

Clauses 410 to 415 put and passed.

Clause 416: Parties to proceeding —

Hon HELEN MORTON: I move —

Page 294, line 9 — To delete the line and insert —

(b) the applicant; and

This amendment is moved for the same reason as the amendment to clause 409, around parties to a proceeding about approval of electroconvulsive therapy. As with ECT, it is appropriate that the patient's psychiatrist, as the person who makes the application for ECT, is a party to the proceeding.

Amendment put and passed.

Clause, as amended, put and passed.

Clauses 417 to 419 put and passed.

Clause 420: Terms used —

Hon HELEN MORTON: I move —

Page 296, after line 5 — To insert —

to ensure that a treatment, support and discharge plan for a patient is prepared, reviewed or revised;

This amendment will empower the Mental Health Tribunal to issue a compliance notice for a failure to prepare, review or revise a treatment, support or discharge plan as required under the bill.

Hon SALLY TALBOT: As this bill has been around for so long, and we are now on to issue 6 of the supplementary notice paper, which is where this amendment has just appeared today, perhaps the minister will give us just a little more explanation about why she is supporting this amendment.

Hon HELEN MORTON: We had some discussions about wanting to ensure that a compliance notice for matters to do with a treatment, support and discharge plan for a patient is prepared, reviewed and revised. The effect of clause 469 of the bill makes it an offence to fail to give effect to the direction of the tribunal, including a direction contained in a compliance notice, and the penalty for this offence is a $10 000 fine. I recall making comment to that effect in my second reading reply speech. The amendment will not empower the tribunal to dictate the content of a treatment, support and discharge plan; that is a matter for the treating team, the patient and the patient's support persons. A decision to exclude a specific support person from the development of

a treatment, support and discharge plan can be challenged before the tribunal under part 21, division 11 of the bill, which concerns decisions affecting rights. The compliance notices are reserved for matters of strict compliance. The decision that involve the exercise of discretion can be challenged under part 21, division 11 of the bill. I add that this is a strengthening of the requirements for practitioners to have these treatment, support and discharge plans, and an opportunity for the Mental Health Tribunal to compel these plans to be provided.

Amendment put and passed.

Clause, as amended, put and passed.

Clause 421 put and passed.

Clause 422: Application for service of compliance notice —

Hon STEPHEN DAWSON: The submission provided to members of the Legislative Council by the Mental Health Law Centre states —

> The patient's lawyer or guardian, or parent or guardian should be expressly permitted to make an application for a compliance notice; noting the patient's lawyer might be appointed by the Tribunal or by a guardian or administrator; or by a parent or guardian of a child.

The submission calls for the addition of a new paragraph (aa), to read —

> patient's lawyer or guardian, or in the case of a child, the parent or guardian.

First of all, was this suggestion considered? Secondly, having considered the suggestion, why did the minister not seek to make an amendment along these lines?

Hon HELEN MORTON: I would make the comment that all the comments were duly considered and put into a mapping exercise, so to speak.

Hon Stephen Dawson: Good to hear.

Hon HELEN MORTON: Going back to the mapping exercise, the parliamentary counsel advice is that this is unnecessary, as the legal representative may already support the person to make an application for the Mental Health Tribunal hearing; and this is the position in all judicial contexts that the Mental Health Commission is aware of.

Clause put and passed.

Clauses 423 and 424 put and passed.

Clause 425: Application for review —

Hon STEPHEN DAWSON: Again, along the same lines, the Mental Health Law Centre has proposed to include the same thing—that is, to recognise a patient's legal guardian, or, in the case of a child, a parent or guardian. I want to make sure that in the case of clause 425, this suggestion was also considered and was included in the mapping exercise, and it was decided that it was not needed. If that is the case, would the minister let us know?

Hon HELEN MORTON: Yes, it was included and was part of the mapping exercise; and, for the same reasons, it was not supported.

Hon STEPHEN DAWSON: I know it is getting late, but it is important to put these things on the record. Obviously not all members of this place are sounding as sprightly as I am this evening. I wish that the minister, certainly when she is considering these things, would put a bit of effort into it and would not answer as though she is bored by it. This is important stuff. We seek to make this bill better. I certainly hope the minister is not bored by it. As this debate has gone along, we have worked well together. We have not sought to waste time. We have sought to raise important issues that need to be raised. So I hope we will continue to do that, because, if we continue to do that in good spirit, who knows—we might finish this bill sooner rather than later.

The DEPUTY CHAIR (Hon Liz Behjat): Members, in excellent good spirits, and very sprightly, the question before the chamber is that clause 425 do stand as printed.

Clause put and passed.

Clause 426: Parties to proceeding —

Hon HELEN MORTON: I would like to indicate, before I move my amendment, that nothing I have done in my entire life has given me the same pleasure as seeing this bill go through. So do not ever imagine that in any way I am bored by this. I am completely enthralled by it and enjoying every second of it. I just want the member to know that.

Hon Stephen Dawson: I am pleased to hear it.

Hon HELEN MORTON: If it sounded as though it was a bit rushed, it is because I am looking at the time and hoping that we can get through a fair whack of the bill before the end of today.

Hon Ken Travers: Savour the moment!

Hon HELEN MORTON: Exactly. I move —

Page 298, lines 26 and 27 — To delete the lines.

I move this amendment for the same reasons as I have described previously—around removing reference to a psychiatrist being a party to some proceedings.

Amendment put and passed.

Clause, as amended, put and passed.

Clauses 427 to 430 put and passed.

Clause 431: Parties to proceeding —

Hon HELEN MORTON: I move —

Page 300, lines 16 to 18 — To delete the lines and insert —

(b) if the applicant is not the person who made the nomination — the applicant; and

The proposed amendment to clause 431 will remove the nominated person as a party to proceedings in the tribunal's jurisdiction relating to nominated persons. The nominated person can attend the hearing or be summonsed by the tribunal and will be a party when he or she makes the application for review. However, in some cases it may not be in the best interests of the patient for a nominated person to attend the hearing; for example, for the reason set out in clause 430(a) when the nominated person is likely to adversely affect to a significant degree the interests of the patient.

Hon SALLY TALBOT: Noting the minister's renewed sprightliness, can I ask her to confirm that this is a slightly different amendment to the previous ones and not just a continuation of the removal of the psychiatrist?

Hon HELEN MORTON: It is about making sure who can be a party to the proceedings in the tribunal's jurisdiction to a nominated person, but the reasons for it are that in some cases it may not be in the best interests of the patient for a nominated person to attend the hearing, for example, as I indicated, for the reasons set out in clause 430(a) when the nominated person is likely to adversely affect the interests of the patient to a significant degree. Further, the nominated person may not be willing to be the nominated person, which is a ground for revocation under clause 430(c). In such a case, it would not be appropriate to compel the nominated person to be a party to the proceedings.

Hon SALLY TALBOT: Does that apply if the party to the proceedings is a child? The minister is talking about a person being excluded on the basis that they are not going to advocate in the interests of the person who is the subject of the hearing. Would that be the case if the subject of the hearing is a child?

Hon HELEN MORTON: This is not about people who may or may not be excluded from a hearing; this is about people who may be a party to a hearing, which obviously has a different context in the legal standing of the hearing, and it is about ensuring that we make sure that the right people are a party to the hearing.

Amendment put and passed.

Clause, as amended, put and passed.

Clause 432 put and passed.

Clause 433: Parties to proceeding —

Hon HELEN MORTON: I move —

Page 301, lines 10 and 11 — To delete the lines and insert —

(b) if the applicant is not the person whose rights it is alleged are affected — the applicant; and

This amendment involves a minor drafting change to bring paragraph (b) into line with amendments previously made around parties to proceedings before the tribunal.

Amendment put and passed.

Clause, as amended, put and passed.

Clauses 434 to 443 put and passed.

Clause 444: Notice of applications —

Hon HELEN MORTON: I am a little bit nervous about this. The proposed amendment to clause 444 corresponds to the proposed government amendment at clause 447, which means we are trying to consider something that is —

The DEPUTY CHAIR (Hon Liz Behjat): Do you wish to postpone clause 444 until we have dealt with clause 447?

Hon HELEN MORTON: It sounds to me like that might be the case.

Further consideration of the clause postponed until after consideration of clause 447, on motion by Hon Helen Morton (Minister for Mental Health).

Clause 445 postponed until after consideration of clause 447, on motion by Hon Helen Morton (Minister for Mental Health).

Clause 446 put and passed.

Clause 447: Party is an adult —

Hon STEPHEN DAWSON: The minister also has amendments to clause 447. In light of her amendment 155/447, I will not move amendment 89/447 standing in my name. I think the minister may have heard some of the concerns raised in relation to this clause and may well have drafted this amendment as a result.

Hon HELEN MORTON: I move —

Page 307, lines 4 and 5 — To delete the lines and insert —

(a) may appear in person; or

(aa) may be represented by any of these people

(i) a legal practitioner;

(ii) a mental health advocate;

(iii) any person who, in the Tribunal's opinion, is willing and able to represent the adult's interests;

or

This clause states, in part —

(a) may appear in person or be represented by another person;

Hon Stephen Dawson proposed that this clause be amended to read —

In a proceeding, a party who is an adult —

(a) may appear in person or be represented by —

(i) a legal practitioner; or

(ii) any other person

or

The government accepts this suggestion, but with some modifications. Firstly, it is considered that express reference should also be made to mental health advocates. Advocates will possess the knowledge and skills necessary to provide effective representation for those persons who do not wish to be represented by a lawyer. Secondly, the amendment I am moving proposes that the reference to "any other person" be amended to read —

any person who, in the Tribunal's opinion, is willing and able to represent the adult's interests;

That will establish a safeguard against representation by unsuitable persons.

Hon SALLY TALBOT: How will the tribunal make that decision, minister?

Hon HELEN MORTON: I will give some examples of considerations that the Mental Health Tribunal would take into account: is the person willing; is the person a child or an adult; does the person have decision-making capacity; or is the person exploiting the patient for some reason? The Mental Health Tribunal will take into account a variety of considerations in that process.

Hon SALLY TALBOT: I need the minister to elaborate on a couple of those. How would the tribunal be likely to rule, in the minister's opinion, on each of those? An example was that if the person is a child. What we are saying here is that a party who is an adult—because we are not deleting that part of the clause—may appear in person or may be represented by any of these people, including a child; or is the minister saying that if it is a child, the tribunal will rule that that person is not appropriate?

Hon HELEN MORTON: That is correct; the tribunal will say that that is not appropriate.

Hon SALLY TALBOT: Does the minister envisage, in a sense, some sort of preliminary hearing by the tribunal that would interview the person who has been nominated by the party?

Hon HELEN MORTON: It could be at the commencement of the hearing, or it could be a concern brought to the tribunal's attention prior.

Hon SALLY TALBOT: I am intrigued that the minister is so adamant that the fact that the nominated person was a child will mean that that person is not eligible or is not going to be recognised by the tribunal. Did the minister give consideration to prescribing people who could be chosen? It just seems odd to have the phrase contained in subparagraph (iii) of the minister's amendment —

> any person who, in the Tribunal's opinion, is willing and able to represent the adult's interests;

And then say specifically that that person cannot be a child. I wonder why there is no circumscribing of that part of the clause.

Hon HELEN MORTON: Basically, it is up to the tribunal to determine that. It has not been prescribed in legislation because, once again, each case would be taken on its individual merits. Although we use the example of a child, it may be that a child is acting as an interpreter to assist with translating. If that child has the capability to undertake that role and be the nominated person, that actually might be an acceptable process for the tribunal. I gave examples of things that would be taken into consideration, but it would always be done on a case-by-case basis.

Hon SALLY TALBOT: The minister has just contradicted herself in her enthusiasm to explain this clause, because just before she said that it could not be a child and that that would be grounds for ruling that person out, but now the minister says it could be a child if, for example, the child was operating as a translator. Given that this is a very late amendment by the minister, and as Hon Stephen Dawson has said, the Labor opposition will support it, I wonder whether I preferred the amendment moved by Hon Stephen Dawson so that it simply states "any other person".

Hon HELEN MORTON: Unfortunately, that takes up a safeguard against any other person who is not suitable and, for example, a person who may not be willing to be a nominated person in that role.

Hon SALLY TALBOT: I respectfully stress to the minister that there is a world of difference between being unsuitable and being unwilling and I think this is where we are getting into a bit of long grass. I find it a bit convoluted to try to get my head into a place in which I can imagine a party nominating a person to represent them in front of the tribunal and that person then being excluded by the tribunal because the person was not willing to appear as a representative. This seems to be highly contrived and I wonder whether the minister has been a bit too quick to insert that reference to the tribunal's opinion when, in fact, it will operate against the spirit of this amendment.

Hon HELEN MORTON: It is a perfectly reasonable safeguard. First of all, although Hon Sally Talbot said she was having difficulty getting her head around it, I will just add that the clause states that a person must be willing and able. Consequently, a person may not be willing, may not want to be there, may not want to be the nominated person and may not want to be the representative. Another example is that a patient may ask a patient in the bed next to them, with whom they have struck up a reasonably good relationship, to be the representative, but that person in the bed next to them may not be suitable for reasons of their own illness. There are also known examples of exploitative individuals trying to represent patients and we would not want that to be the case either. The way it is written is absolutely necessary; I think it fulfils the obligations of legislation to make sure that we have people who are willing and able.

Hon SALLY TALBOT: Can I do a bit of crosschecking here, if I may? I refer the minister back to the clauses that mentioned the people who can and cannot have access to the un-redacted medical records of the patient. Is it possible, under the amendments the minister is proposing to this clause, that somebody who is not eligible to see the full medical records could represent the party?

Hon HELEN MORTON: The people we have preferenced in this clause, legal practitioner, mental health advocate and doctor—it can be the person's own doctor—are people that we have said can have access to those medical records. The —

Hon Sally Talbot: Where does the doctor come from?

Hon HELEN MORTON: Under clause 250 it is one of the people who can have unrestricted access to the medical record. The member is quite right that in respect of "any person who, in the Tribunal's opinion, is willing and able to represent the adult's interests", there are potentially people who would not have access to the full record.

Hon SALLY TALBOT: I know that doctors can have access to the full medical record, but the minister is answering a different question from the one I asked. Let me ask the question that the minister maybe thought I was asking, which is: can the person nominate their doctor as "any person" under (iii)?

Hon HELEN MORTON: I believe the member is referring to a person's general practitioner or the doctor in the hospital where the person may be, or any other doctor or treating psychiatrist that has seen that person and has responsibility in some way. Those people can have access to the records.

Hon Sally Talbot: But can they be nominated under this clause to appear for the person?

Hon HELEN MORTON: Yes, it makes it really clear. It provides for "any person who, in the Tribunal's opinion, is willing and able to represent the adult's interests".

Hon SALLY TALBOT: That is part of the question, but it is not actually the question I was asking. I asked: could the party who has been nominated be a person who is not entitled to have access to the full medical record? I know that doctors can, so we have cleared that up, but could the person who has been asked to advocate for the patient be somebody who does not have access to the full medical record?

Hon HELEN MORTON: The question the member is asking me is: will they get access through the tribunal hearing to the medical record? The bill requires that natural justice be followed in that respect. However, if the member is asking me the slightly different question—and I think she is: would these people outside of the tribunal hearing have access to that person's medical files? The answer is that some of them would not.

Hon SALLY TALBOT: I will now go on to ask the minister the question I was going to ask her, depending on her answer. Would the fact that the person nominated is not eligible to have access to the whole medical record be a ground for the tribunal to say that this person was not able to represent the adult's interests?

Hon HELEN MORTON: So that it is on the record, it is really important to understand that that is not the grounds by which somebody would be determined as being willing and able. There would be other grounds. They would have access to the information in the course of the tribunal hearing, but some people would not be able to go to the health service and ask for the files.

Hon SALLY TALBOT: Let us leave out "willing". Let us assume that the person is willing. We are talking about "able" to represent the adult's interest. I think the minister just told us that the tribunal could determine that somebody was able to represent the adult's interest and yet that person might be in a category of persons who do not have access to the full medical record.

Hon HELEN MORTON: Under section 437(2), the tribunal is bound by laws of natural justice, and this implies that representatives should be able to view and challenge all relevant information, but there is no entitlement—which is what I said before—for that person to get that information from the service direct at some point for themselves, outside of the tribunal process.

Hon SALLY TALBOT: I think the minister can see where this is going.

Hon Helen Morton: I cannot in the least.

Hon SALLY TALBOT: I am surprised about that because the minister has introduced this notion that the tribunal will make up its mind about whether somebody is able to represent the adult's interest. Absolutely the minister is saying that somebody who was not eligible could not go to the health department to get access to a record on the basis that at some point they might be asked by a patient to represent the patient. That is entirely correct of course. We need to know at what point the person will be able to see the medical record. I am seeking an answer to the question: how can the tribunal determine that somebody is able to represent that person's interest before that person has seen the medical record and may at that point rule themselves unwilling to represent the person's interest? It is not a trick question. I am not indicating that we are not supporting the general direction we are going in. I am asking whether anybody has thought through how this will work in the concrete practicality of a tribunal hearing.

The DEPUTY CHAIR (Hon Liz Behjat): Members, as enthralling as this topic is at the moment, I am afraid that noting the time I am required to report progress. We will have to wait until tomorrow for the minister's answer about clause 447.

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