

GUARDIANSHIP AND ADMINISTRATION AMENDMENT (MEDICAL RESEARCH) BILL 2020

Returned

Bill returned from the Council with amendments.

Council's Amendments — Consideration in Detail

The amendments made by the Council were as follows —

No 1

Clause 2, page 2, lines 7 and 8 — To delete the lines and substitute —
receives the Royal Assent (*assent day*);

- (b) sections 12A and 14 — on the day after the period of 4 years beginning on the day after assent day;
- (c) the rest of the Act — on the day after assent day.

No 2

New Clause 12A, page 31, after line 25 — To insert —

12A. Section 110ZS deleted
Delete section 110ZS.

No 3

New Clause 14, page 32, after line 11 — To insert —

14. Schedule 5 Division 3 inserted

At the end of Schedule 5 insert:

Division 3 — Transitional provision in relation to *Guardianship and Administration Amendment (Medical Research) Act 2020*

8. Effect of repealed s. 110ZS on continuing urgent medical research after repeal day

- (1) In this clause —

amending Act means the *Guardianship and Administration Amendment (Medical Research) Act 2020*;

continuing urgent medical research means medical research in relation to a research candidate that —

- (a) commenced before repeal day pursuant to an urgent medical research decision; and
- (b) continues on and after repeal day;

repeal day means the day on which section 12A of the amending Act comes into operation;

repealed section 110ZS means section 110ZS as repealed by section 12A of the amending Act;

urgent medical research decision means a decision before repeal day to conduct medical research in relation to a research candidate under repealed section 110ZS(1).

- (2) Until continuing urgent medical research is completed in relation to a research candidate —

- (a) the urgent medical research decision pursuant to which the research is conducted continues to have effect as if repealed section 110ZS were not repealed; and
- (b) Part 9E and repealed section 110ZS continue to apply to the research and urgent medical research decision as if repealed section 110ZS were not repealed.

Mr R.H. COOK — by leave: I move —

That the amendments made by the Council be agreed to.

There has obviously been a lot of discussion today in the upper house, and the members respectfully gave due consideration to the legislation that has returned to us. During the debate, there was a range of discussions about the impact of proposed new section 110ZS. This is the section that deals with the “doctors only” decision on consent regarding an urgent medical decision.

There was a range of discussions, but the effect of the amendments today is to provide a four-year sunset clause in relation to those. I understand that undertakings have been made both in this chamber and the upper house for parliamentary committees to examine the effect of this legislation and this section in particular, but of greater interest is that this will now be subject to a statutory review of the legislation to ensure that it is meeting the expectations of the drafters.

Mr P.A. KATSAMBANIS: I will speak to all three amendments together. Clearly, yesterday, when we were debating this bill, we spoke about the possibility of having some form of sunset clause. The member for Roe on behalf of the Nationals WA moved an amendment to introduce a two-year sunset clause, and we discussed at the time that one of the unfortunate consequences of that clause as drafted was that it would sunset the entire bill. That could have ended up having a series of unintended consequences, the first one being that save and except for the operation of proposed section 110ZS, the rest of the bill seemed to have general consensus support, in principle, anyway. The major consternation around section 110ZS was that there may be other unintended consequences that we are not aware of, and there had not been sufficient opportunity, firstly, to look at the wording of the bill and the provision; secondly, to seek broader and wider public consultation on it. It would have been unfortunate if the entire bill had sunsetted after two years, or the possibility was there that it could sunset.

It was also raised in that debate that there would be a question mark around research that had commenced upon the sunset of the bill and what would happen to that research. Would the research and the treatment that was associated with that research be allowed to be continued or not? Obviously, overnight—this is not a criticism at all of the member for Roe, who was not only well-intentioned, but also clearly had the right idea because his concept and principle has been picked up in the other place—there has been an opportunity for more of a review of what is going on, and it seems to have been agreed by all parties to insert the sunset clause that is before us and restrict it to proposed section 110ZS, which is, for want of a better term, the “problematic section” or the proposed section that has caused the greatest amount of consternation. Meanwhile, the rest of the provisions of the bill, once they become part of the Guardianship and Administration Act, will continue to apply irrespective of any sunset until the Parliament, in the future, decides otherwise. Amendments 1 and 2 introduce the four-year period before sunset. Amendment 3 is a series of transitional provisions, which, I believe—the minister can correct me if I am wrong—were proposed by the government. I believe that they have gone through the usual process of consideration by the drafters and the Solicitor-General so the best possible legal minds have looked at them and drafted a transitional provision to ensure that if the provision does sunset—I use the word “if” and I will get to that in a minute—any research that commenced prior to the sunset date can continue until it runs its course as if there had been no sunset. From the sunset date onwards, proposed section 110ZS cannot be utilised and new research cannot commence, but proposed section 110ZR and all the other provisions in the bill can continue to be utilised. From my perspective, that is a better outcome than what we previously had. I think the question still remains about how proposed section 110ZS will operate once it becomes law. As the minister indicated, there will be a statutory review after the expiration of 12 months.

Mr Z.R.F. KIRKUP: I would like to hear more from the member for Hillarys.

Several members interjected.

The SPEAKER: Silly, member!

Mr P.A. KATSAMBANIS: Mr Speaker, you are interrupting my train of thought. That is not a good idea because I might have to start again and I do not want to do that. I picked up the hit right at the start of this session and I am trying to truncate it as quickly as possible.

The research will carry forward. After 12 months, there will be a statutory review of all the provisions that are being introduced by the amending bill and, hopefully, that will give us time for the statutory review to be undertaken and a parliamentary committee inquiry will run in parallel. Given some of the issues that I raised last night about the period that we are in, I imagine that a parliamentary committee of the next Parliament will commence such a review rather than having the situation of a committee starting it before prorogation for the purpose of the election, but I will leave it to the people who are well above my pay grade to decide all of that. Obviously, the machinery of government, the machinery of review by a committee and the statutory review will get us to a situation at which prior to the expiration of the four-year period and the sunset of the proposed section, the next Parliament will apply its mind to whether we need this proposed section, whether it is necessary, whether it is well

calibrated, whether it should be removed, whether it should be amended or whether the only action that is needed is to remove the sunset after having examined it in operation. Those decisions will be left to the next Parliament. I have great confidence that that will happen.

The only remaining question, minister, relates to the transitional provision. It is not really anything other than seeking clarification that this will be the case.

The broad provisions of the bill before us allow that when urgent medical research is performed under proposed section 110ZS, during that research period, a search will continue to find a next of kin-type person to consent to the research. It will not be set and forget. There will be an obligation on the researchers to continue to seek that next of kin in whichever order is permitted under the other provisions of the bill.

My question is: will that obligation on the researcher be maintained for any research that commences prior to sunset and continues, by the operation of these transitional provisions, after sunset; and will there be no change in the general obligations that apply in the act? I am certain that the answer is yes, but given this opportunity, it would be good to include that on the record so that there is absolutely no doubt.

Ms M.J. DAVIES: I, too, will address all the amendments that have come to this place in one go. I appreciate that everybody would like to be able to go home relatively quickly. As we indicated in the earlier debate, members of the Nationals WA absolutely support the intention of this bill for the treatment of patients with COVID-19. We will not be standing in the way of allowing the bill to progress. We made that very clear in this house and, as the member who spoke previously has indicated, from our perspective, some compromises have been made in the Legislative Council. The question of not preventing that research from continuing by sunseting the whole piece of legislation was a topic of much discussion in this house. We understood the concerns, but I did not think that it was something that could not be managed by the next Parliament or, indeed, those who have been involved in drafting this bill. We still have concerns about the fact it has taken a significant amount of time for us to get here through multiple iterations of the bill. There are clearly some concerns behind the scenes between the medical fraternity and the legal fraternity about the application and intentions of this bill. Nonetheless, the minister has our support for what has come back from the Legislative Council, but I want to be clear that this amendment is not our preferred outcome. However, it is a compromise and we accept it in the context of the other undertakings that have been made to send it to a committee for further investigation. In principle, we believe that there should have been a more fulsome opportunity to interrogate the full legislation, but in the spirit of bipartisanship, we accept that a majority of the members of Parliament in this and the other place have agreed with the amendments that have been made and they improve the bill somewhat. Our concerns are on the record from the debate that we had previously. I will not waste the chamber's time going over those again. I reiterate that we support, in principle, what this bill seeks to achieve and we do not want to stand in the way of treatment that may be available to those who are suffering from COVID-19 in these very challenging circumstances. With that I will sit and allow the minister to respond.

Mr R.H. COOK: I thank the members for their comments and their intent to support these amendments. They are important amendments and, as I said, they were struck during the debate in the other place in a manner that I think captured the consensus and intention of all members to make sure that Western Australian researchers can play their part in this important fight against COVID-19. Obviously, there are some material differences between the amendment that was moved in this place by the member for Roe and what we have landed on. This is a four-year sunset clause rather than a two-year sunset clause, so it does not offend the fact that many research efforts will go beyond the here and now. It will make sure that Western Australian researchers can participate in international studies, which require researchers to have a longer term perspective. In addition, the amendment to insert a sunset clause really goes to the specifics of proposed section 110ZS, which has enjoyed the lion's share of attention during the debate. From that perspective, this amendment is quite useful to really lay bare the concerns of members of Parliament.

To answer the question of the member for Hillarys, yes, this is part of the continuum of a doctor-patient relationship, and I draw his attention to proposed section 110ZS(3), which states —

While a researcher conducts medical research in relation to a research candidate in accordance with an urgent medical research decision, the lead researcher in relation to the research must continue to take reasonable steps to obtain a research decision under section 110ZR in relation to the research candidate from the research decision-maker for the candidate.

That answers the member's question. Yes, they should be going back to seek consent from the guardians.

This is an important bill, because it will allow our research community to conduct important research in participation and collaboration with the research efforts that are going on around the globe. From that perspective, it will allow them to start immediately. This will be a real shot in the arm to the research community in Western Australia. We have some world leaders in the field, as all members know. Jeremy Nicholson from the Australian National Phenome Centre is doing work around biomarkers, which might provide further insights into the epidemiology of this

disease, its manifestation and the way it impacts people differently. Tony Korman from the Telethon Kids Institute is doing work on the human vaccine program, which is about developing a vaccine that is adapted to the mutations that from time to time impact on the coronavirus generally, not the current novel coronavirus that is having an impact on us now. This is an important opportunity. I am very much excited about and look forward to Western Australian researchers making their mark in the fight against COVID-19.

I thank all involved. I really appreciate the attitude and generosity that both the National and Liberal Parties have brought to this debate in understanding the difficulties and limitations that we have had in scrutinising the bill. I appreciate their patience and the work they have done to make sure that this bill had some level of examination and that there was rigour in the debate. In particular, I thank all the staff involved in the negotiations and consultation on and the drafting of this legislation. In particular, these two gentlemen at the table who are advising me have done a prodigious job in not only advising me on the bill, but also corralling all the stakeholders and ensuring that the drafting was competent and produced good legislation. From that perspective, I very much thank Daniel Fatovich and Josh Thomson for their terrific work. With that, I hope I can conclude the debate.

Question put and passed; the Council's amendments agreed to.

The Council acquainted accordingly.