MENTAL HEALTH BILL 2013

Council's Amendments — Consideration in Detail

The following amendments made by the Council now considered —

No. 1

Clause 4, page 4, lines 16 and 17 — To delete "mental health practitioner;" and insert —

other health professional;

No. 2

Clause 4, page 5, after line 26 — To insert —

health professional means —

(a) a medical practitioner; or

(b) a nurse; or

(c) an occupational therapist; or

(d) a psychologist; or

(e) a social worker; or

(f) in relation to a person who is of Aboriginal or Torres Strait Islander descent —

(i) a health professional listed in paragraphs (a) to (e); or

(ii) an Aboriginal or Torres Strait Islander mental health worker;

No. 3

Clause 4, page 6, lines 7 to 11 — To delete the lines and insert —

involuntary patient has the meaning given in section 21(1);

involuntary treatment order has the meaning given in section 21(2);

No. 4

Clause 20, page 20, line 22 — To delete "medical practitioner or other".

No. 5

Clause 28, page 25, line 30 — To delete "referral" and insert —

order

No. 6

Clause 28, page 25, line 31 — To delete ", because of the person's mental or physical condition,".

No. 7

Clause 28, page 26, lines 19 and 20 — To delete ", because of the person's mental or physical condition,".

No. 8

Clause 28, page 27, lines 10 and 11 — To delete "the person's psychiatrist" and insert —

a health professional who is currently providing the person with treatment

No. 9

Clause 29, page 28, line 6 — To delete "because of the person's mental or physical condition,".

No. 10

Clause 34, page 32, line 7 — To delete "the inpatient's psychiatrist" and insert —

a health professional who is currently providing the inpatient with treatment

No. 11

Clause 48, page 40, lines 2 to 14 — To delete the lines.

No. 12

Clause 48, page 41, line 1 — To delete "prescribed".

No. 13

Clause 52, page 42, line 21 — To delete "the person's psychiatrist" and insert —

a health professional who is currently providing the person with treatment

No. 14

Clause 53, page 43, line 17 — To delete "the person's psychiatrist" and insert —

a health professional who is currently providing the person with treatment

No. 15

Clause 58, page 47, line 9 — To delete "the person's psychiatrist" and insert —

a health professional who is currently providing the person with treatment

No. 16

Clause 59, page 48, line 20 — To delete "the person's psychiatrist" and insert —

a health professional who is currently providing the person with treatment

No. 17

Clause 62, page 50, lines 24 and 25 — To delete ", because of the person's mental or physical condition,".

No. 18

Clause 62, page 51, lines 6 and 7 — To delete ", because of the person's mental or physical condition,".

No. 19

Clause 62, page 51, line 25 — To delete "the person's psychiatrist" and insert —

a health professional who is currently providing the person with treatment

No. 20

Clause 63, page 52, line 16 — To delete "because of the person's mental or physical condition,".

No. 21

Clause 70, page 56, line 14 — To delete "the person's psychiatrist" and insert —

a health professional who is currently providing the person with treatment

No. 22

Clause 79, page 60, lines 17 to 29 — To delete the lines.

No. 23

Clause 79, page 61, line 14 — To delete "prescribed".

No. 24

Clause 126, page 95, lines 22 to 28 — To delete the lines and insert —

(c) the supervising psychiatrist reasonably believes that, despite the steps that have been taken, the non-compliance is continuing and that, if the non-compliance continues, there is —

(i) a significant risk to the health or safety of the involuntary community patient or to the safety of another person; or

(ii) a significant risk of serious harm to the involuntary community patient or to another person; or

(iii) a significant risk of the involuntary community patient suffering serious physical or mental deterioration.

No. 25

Clause 129, page 98, after line 4 — To insert —

(5) The making of a transport order under subsection (2) is an event to which Part 9 applies and the practitioner who makes the order is the person responsible under that Part for notification of that event.

No. 26

Clause 133, page 102, lines 3 and 4 — To delete "because of the involuntary community patient's mental or physical condition,"

No. 27

Clause 139, page 104, lines 21 and 22 — To delete "nominated person, carer or close family member" and insert —

carer, close family member or other personal support person

No. 28

Clause 140, page 105, line 4 — To delete "nominated person, carer or close family member" and insert —

carer, close family member or other personal support person

No. 29

Clause 140, page 105, line 5 — To delete "nominated person, carer or close family member" and insert —

carer, close family member or other personal support person

No. 30

Clause 142, page 106, line 2 — To delete "nominated person, carer or close family member" and insert —

carer, close family member or other personal support person

No. 31

Clause 142, page 106, line 9 — To delete "nominated person, carer or close family member" and insert —

carer, close family member or other personal support person

No. 32

Clause 142, page 106, line 11 — To delete "nominated person, carer or close family member" and insert —

carer, close family member or other personal support person

No. 33

Clause 142, page 106, line 15 — To delete "nominated person, carer or close family member" and insert —

carer, close family member or other personal support person

No. 34

Clause 142, page 106, line 18 — To delete "nominated person, carer or close family member" and insert —

carer, close family member or other personal support person

No. 35

Clause 143, page 106, line 29 — To delete "nominated person, carer or close family member" and insert —

carer, close family member or other personal support person

No. 36

Clause 143, page 106, lines 30 and 31 — To delete "nominated person, carer or close family member" and insert —

carer, close family member or other personal support person

No. 37

Clause 143, page 106, lines 33 and 34 — To delete "nominated person, carer or close family member" and insert —

carer, close family member or other personal support person

No. 38

Clause 143, page 107, line 3 — To delete "nominated person, carer or close family member" and insert —

carer, close family member or other personal support person

No. 39

Clause 144, page 107, lines 17 and 18 — To delete "nominated person, carer or close family member" and insert —

carer, close family member or other personal support person

No. 40

Clause 144, page 107, line 23 — To delete "nominated person, carer or close family member" and insert —

carer, close family member or other personal support person

No. 41

Clause 144, page 107, line 26 — To delete "nominated person, carer or close family member" and insert —

carer, close family member or other personal support person

No. 42

Clause 144, page 107, lines 28 and 29 — To delete "nominated person, carer or close family member" and insert —

carer, close family member or other personal support person

No. 43

Clause 212, page 155, after line 9 — To insert —

(2) A person is not secluded merely because the person is alone in a room or area that the person is unable to leave because of frailty, illness or mental or physical disability.

No. 44

Clause 227, page 165, after line 17 — To insert —

(2A) A person is not being physically restrained merely because the person is being provided with the physical support or assistance reasonably necessary —

(a) to enable the person to carry out daily living activities; or

(b) to redirect the person because the person is disoriented.

No. 45

Clause 241, page 178, lines 16 to 20 — To delete the lines and insert —

(2) The person in charge of the hospital must ensure that a medical practitioner physically attends on the person, for the purpose of examining the person to assess the person's physical condition, as soon as practicable and, in any event, within 12 hours after the time when the person is admitted or received, and at reasonable intervals after that initial attendance, until the first of these things occurs —

(a) the person is examined by a medical practitioner;

(b) if the person is a voluntary inpatient —

(i) the person refuses to consent to being examined by a medical practitioner; or

(ii) if the person does not have the capacity to consent to being examined by a medical practitioner — the person who is authorised by law to consent to the provision of treatment to the person refuses to consent to the person being examined by a medical practitioner;

(c) the person is released or discharged by or otherwise leaves the hospital.

No. 46

Clause 241, page 178, lines 21 to 23 — To delete the lines and insert —

(3) For the purpose of assessing under this section the physical condition of a person referred to in subsection (1)(a)(ii) or (iii) or (b), these things may be done without consent —

No. 47

Clause 241, page 178, lines 27 and 28 — To delete "purposes of subsection (2)" and insert —

purpose of assessing under this section the person's physical condition

No. 48

Clause 248, page 183, line 25 — To delete "that" and insert —

that, as soon as practicable after the refusal,

No. 49

Clause 253, page 185, line 24 — To delete "$15 000" and insert —

$24 000

No. 50

Clause 254, 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

No. 51

Clause 305, page 218, after line 2 — To insert —

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

No. 52

Clause 305, page 218, after line 10 — To insert —

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

No. 53

Clause 317, page 226, line 22 — To delete "who is" and insert —

and is

No. 54

Clause 317, 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.

No. 55

Clause 320, page 228, line 18 — To insert after "by" —

delaying,

No. 56

Clause 328, page 234, lines 13 and 14 — To delete the lines.

No. 57

Clause 337, page 243, line 29 — To delete the line and insert —

so many of those people as the Director considers appropriate.

No. 58

Clause 360, page 262, line 29 — To delete "section 249(1)(a)." and insert —

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

No. 59

Clause 360, 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

No. 60

Clause 361, page 263, line 19 — To delete "section 249(1)(a); and" and insert —

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

No. 61

Clause 393, 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

No. 62

Clause 397, page 284, line 27 — To delete "***order***) —" and insert —

***order*)** that is or was in force —

No. 63

Clause 398, page 285, line 5 — To delete "section 400" and insert —

section 400(1)

No. 64

Clause 398, page 285, line 6 — To insert after "order is" —

or was

No. 65

Clause 400, page 286, line 24 — To delete "patient;" and insert —

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

No. 66

Clause 400, page 286, line 27 — To delete "patient;" and insert —

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

No. 67

Clause 400, 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.

No. 68

New Clause 400A, 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.

No. 69

Clause 401, page 287, line 3 — To insert after "to be" —

or to have been

No. 70

Clause 401, page 287, line 4 — To insert after "order is" —

or was

No. 71

Clause 401, page 287, line 5 — To insert after "been" —

or was

No. 72

Clause 401, page 287, line 14 — To insert after "been" —

or were

No. 73

New Clause 401A, 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.

No. 74

Clause 404, 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

No. 75

Clause 409, page 290, line 31 — To delete the line and insert —

(b) the applicant; and

No. 76

Clause 416, page 294, line 9 — To delete the line and insert —

(b) the applicant; and

No. 77

Clause 420, page 296, after line 5 — To insert —

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

No. 78

Clause 426, page 298, lines 26 and 27 — To delete the lines.

No. 79

Clause 431, 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

No. 80

Clause 433, 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

No. 81

Clause 444, page 303, line 28 — To delete "section 447(1)(a) or (b)" and insert —

section 447(1)(aa) or (b)

No. 82

Clause 444, page 304, line 5 — To delete "section 447(1)(a) or (b)" and insert —

section 447(1)(aa) or (b)

No. 83

Clause 445, page 305, line 13 — To delete "section 447(1)(a) or (b)" and insert —

section 447(1)(aa) or (b)

No. 84

Clause 445, page 305, line 18 — To delete "section 447(1)(a) or (b)" and insert —

section 447(1)(aa) or (b)

No. 85

Clause 447, 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

No. 86

Clause 447, page 307, line 6 — To delete "another person" and insert —

a person listed in paragraph (aa)

No. 87

Clause 447, page 307, line 9 — To delete "may" and insert —

must in the case of the party who is the person concerned in the proceeding, and may in the case of any other party,

No. 88

Clause 448, page 307, lines 28 to 30 — To delete the lines and insert —

(iii) the child's parent or guardian;

No. 89

Clause 448, page 308, line 4 — To delete "another person" and insert —

a person listed in paragraph (b)

No. 90

Clause 448, page 308, line 7 — To delete "may" and insert —

must in the case of the party who is the person concerned in the proceeding, and may in the case of any other party,

No. 91

Clause 449, page 308, lines 25 to 27 — To delete the lines and insert —

(c) the child's parent or guardian;

No. 92

Clause 450, page 309, line 5 — To delete "at a hearing" and insert —

in a proceeding

No. 93

Clause 454, page 311, after line 15 — To insert —

(3A) The Tribunal must make arrangements for the person concerned in a proceeding to be represented at a hearing or a part of a hearing if —

(a) the person concerned is excluded by an order made under subsection (2)(b) from the hearing or part of the hearing and is appearing in person in the proceeding; or

(b) the person concerned's representative in the proceeding is excluded by an order made under subsection (2)(b) from the hearing or part of the hearing.

No. 94

Clause 454, page 311, line 16 — To delete the line.

No. 95

Clause 456, page 312, line 3 — To insert after "person" (2nd occurrence) —

chosen

No. 96

Clause 518, page 346, after line 20 — To insert —

(4A) The Chief Psychiatrist cannot give the psychiatrist a direction under subsection (4)(b) to provide the patient with specified treatment unless the Chief Psychiatrist gives the psychiatrist a reasonable opportunity to withdraw from being the patient's psychiatrist.

No. 97

Clause 575, page 381, line 26 — To delete "332(7)," and insert —

332(7) and (8),

No. 98

Clause 582, page 387, line 12 — To insert after "charge" —

in good faith

No. 99

Clause 582, page 387, line 22 — To delete "section 227(2) and (3)," and insert —

section 227(2) to (6),

No. 100

Schedule 2, page 393, in the Table, after row 10 — To insert —

s. 129(5)	The making of a transport order under s. 129(2)	The practitioner who makes the order

Ms A.R. MITCHELL: I move —

That amendment 1 made by the Council be agreed to.

I inform the chamber that I will seek leave to deal with a number of amendments en bloc, obviously with the opposition's agreeance, so that we can proceed slightly more quickly.

The reason for amendment 1, which is to clause 4, is that the definition of a "community health service" as it stands will result in additional practitioners unintentionally being brought within the scope of the bill—for example, registered nurses, occupational therapists and social workers—including those who have not had three years' experience in the management of people with a mental illness. The amendment agreed to by the Council replaces the words "mental health practitioner" with "other health professional".

Dr A.D. BUTI: The parliamentary secretary has just explained the reasons for the proposed amendment to clause 4. My understanding is that the amendment is trying to restrict those who are covered by the Mental Health Bill. The definition of "health professional" is dealt with under the second amendment, yet at clause 536, on page 356 of the bill—I am seeking an explanation—there is a definition of "mental health practitioner". The definition at clause 4 of "community mental health service" states "private practice of a medical practitioner or mental health practitioner". Clause 536 has the definition of a "mental health practitioner", which includes occupational therapists and social workers and which are included in the definitions we will discuss in the next amendment that deals with health professionals. Is it possible that there will be some confusion because the current amendment deletes the term "mental health practitioner" and inserts "other health professional"? Then if we go to the definition of "health professional", we see that the definition of "mental health professional" includes social workers and psychologists, which are also included under the definition of "health professional". I am concerned about possible confusion.

Ms A.R. MITCHELL: There is still a place for mental health practitioners in the bill. We have taken "mental health practitioner" out of the definition of "community mental health service", but there is still a place in the bill for mental health practitioners who have had the three years' experience in the field.

Dr A.D. BUTI: I understand that, but there is an overlap between the definition of "other health professional" and "mental health practitioner". The definition under clause 536, at page 356 of the bill, includes, as I stated, psychologists, social workers and nurses, but there is a different definition for "nurse". Social workers and psychologists come under the definition of "mental health professional", although I note that the parliamentary secretary has said "with at least three years' experience". "Health professional" refers to social workers and psychologists; it does not state "three years' experience", but, of course, it includes a person with three years' experience. Are we saying, therefore, that social workers and psychologists under the definition of "health professional", which we will be moving on to shortly, are only social workers and psychologists who do not have three years' experience; and, if they have three years' experience, do they become mental health practitioners? To be a mental health practitioner, if a person is a psychologist or a social worker—I presume

even a nurse—do they need to have three years' experience? If a person does not have three years' experience, are they just a health professional?

Ms A.R. MITCHELL: The amendment is limited only to the definition of "community mental health service". Health professionals have a place in the bill, and certainly a role in the bill, but the part the member is referring to is not linked to the definition of a mental health service.

Dr A.D. BUTI: That may be the case, but the next amendment provides the definition of "health professional". Then clause 536 has a definition of "mental health practitioner". The bill does not provide a delimitation on whether a social worker, a psychologist or, arguably, a nurse, is a health professional or a mental health practitioner. Is the delimitation the fact that they need three years' experience? If so, that is not prescribed under the definition of "health professional". The definition of "health professional" stands as a definition outside "community mental health service", because it will be on page 5 if we pass the next amendment. The point is that there is an overlap between a psychologist and a social worker and, arguably, a nurse who is also a health professional or a mental health practitioner, but we do not know whether there is a difference between their being a health professional vis-a-vis their being a mental health practitioner, regardless of whether it is for a community mental health service.

Ms A.R. MITCHELL: The bill sets out a different role for a health professional, and also the role of a mental health practitioner. A mental health practitioner has a higher threshold—that three years' experience—and that is an important differentiation between the two.

Dr A.D. BUTI: Therefore, is the bill stating that a psychologist, social worker or nurse without three years' experience in the field is only a health professional?

Ms A.R. Mitchell: That is correct, member.

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

Ms A.R. MITCHELL: I move —

That amendment 2 made by the Council be agreed to.

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

Ms A.R. MITCHELL: I move —

That amendment 3 made by the Council be agreed to.

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

Ms A.R. MITCHELL: I move —

That amendment 4 made by the Council be agreed to.

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

Ms A.R. MITCHELL: I move —

That amendment 5 made by the Council be agreed to.

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

Ms A.R. MITCHELL — by leave: I move —

That amendments 6 and 7 made by the Council be agreed to.

Dr A.D. BUTI: My concern relating to the amendments moved will come up in a number of places in this bill. Amendment 6 states —

Clause 28, page 25, line 31 — To delete ", because of the person's mental or physical condition,".

Clause 28(1) states —

> A medical practitioner or authorised mental health practitioner may make an order authorising the person's detention for up to 24 hours from the time when the referral is made if satisfied that, because of the person's mental or physical condition …

If we delete "because of the person's mental or physical condition", which the amendment seeks to do, I assume a person can be detained for whatever reason. For what reason is a person being detained if we remove "because of the person's mental or physical condition"?

Ms A.R. MITCHELL: I think the member would recall that during the debate he had some concern about "physical condition" being one of the things that people could be assessed on. The important thing to note with

this clause is that it relates to a person being detained. It is also about the transport order. The clause relates to a number of areas.

The amendment made by the Council involves deleting "because of the person's mental or physical condition". The rationale for that removal is that the person's condition is comprehensively and more appropriately dealt with by the referral process. The detention powers under clause 28 apply only in relation to referred persons. That referral process is the key area at the moment.

Dr A.D. BUTI: The parliamentary secretary has a very good memory; we had quite a lengthy discussion about the inclusion of a person's physical condition. I do not think the Council has offered an appropriate solution. In order to remove that error, we have created a problem in that we will remove the words relating to a person's mental condition, which is what the bill is all about.

The parliamentary secretary may say that we are referring to an order as a result of a referral, but we are looking at detention in this clause. Other clauses relate to transfer orders. Surely, that has to have a yardstick to it, which is the mental condition of the person. As the amendment currently stands, we will remove any conditional characteristic. There may have been a conditional characteristic to the initial referral or order but it does not need to be maintained in order for the detention to be maintained. There was a problem connecting mental and physical conditions. The easy solution would have been to remove "physical condition" and ensure that "mental condition" was retained. After all, this is the Mental Health Bill.

Ms A.R. MITCHELL: I have quite a detailed note here, which is about that referral process. I emphasise that the referral process requires an assessment by a medical practitioner or an authorised mental health practitioner. That referral can be made only if the practitioner who carried out the assessment has a reasonable suspicion that the person is in need of an involuntary treatment order. That is the key part. The criteria include, among other things, that the person has a mental illness that is in need of treatment. The mental component of that assessment is still very strong. I do not think the member needs to fear that. The purpose of the detention and transport powers is to facilitate examination of a referred person by a psychiatrist, and that is to merely give effect to the referral. A simple example of where these powers may need to be exercised is when a person who is at serious risk of deliberate self-harm is unwilling to present for examination of their own volition. If at any time a medical practitioner or authorised medical health practitioner suspects that a person no longer meets the involuntary treatment criteria, the appropriate course of action is to consider revoking the referral. If the referral is revoked while the person is detained, the person must be released.

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

Ms A.R. MITCHELL: I move —

That amendment 8 made by the Council be agreed to.

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

Ms A.R. MITCHELL: I move —

That amendment 9 made by the Council be agreed to.

Dr A.D. BUTI: I assume that the explanation given in response to the concern I had with amendment 6 to clause 28 will be the same with this clause.

Ms A.R. MITCHELL: Yes, that is the case.

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

Ms A.R. MITCHELL: I move —

That amendment 10 made by the Council be agreed to.

Dr A.D. BUTI: I think that is an incredibly sensible amendment.

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

Ms A.R. MITCHELL — by leave: I move —

That amendments 11 and 12 made by the Council be agreed to.

Dr A.D. BUTI: These amendments that the parliamentary secretary has moved delete the definition of "prescribed health professional". I presume that is why the government is seeking to delete the word "prescribed" in clause 48, page 41, line 1.

Ms A.R. Mitchell: That is correct, member.

Dr A.D. BUTI: What effect does removing the word "prescribed" have? We have a definition of "health professional". Why is the government seeking to remove the word "prescribed"?

Ms A.R. MITCHELL: We can now just rely on the new definition of "mental health".

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

Ms A.R. MITCHELL — by leave: I move —

That amendments 13 to 16 made by the Council be agreed to.

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

Ms A.R. MITCHELL — by leave: I move —

That amendments 17 and 18 made by the Council be agreed to.

Dr A.D. BUTI: Not so long ago we debated the removal of the reference to a person's mental and physical condition. Now we are talking about an amendment to clause 62, "Detention to enable person to be taken to hospital". It is all part of that process of involuntary detention, transportation et cetera. I understand the explanation the parliamentary secretary gave, which has some logic to it. As I thought about it in the past few minutes, I am really concerned that we have sought to remove "mental condition". As we always said, "physical condition" was silly and should never have been included in the clause.

I have heard the parliamentary secretary's explanation, but it really does not have a legislative mandate. The parliamentary secretary is saying this is the reason we have removed it, but it is not preventing someone being held for a reason other than their mental condition. That is a concern I have, because surely, as we know from clause 10 of the bill, we seek to ensure that liberties and freedoms are not impinged on if possible. Removing this mandated requirement of mental condition, I think, creates a legislative loophole that will allow an authorised mental health practitioner to detain someone for up to 24 hours, even if their mental condition improves but the authorised mental health practitioner believes that the person should still be detained. It is fine to hear the explanation for the amendment, but that explanation does not have a legislative mandatory reflection in respect of the amendment that the parliamentary secretary is seeking to move in amendments 17 and 18 on the notice paper.

Ms A.R. MITCHELL: Member, clause 62 applies to a person who is subject to an order made by a psychiatrist on the basis of involuntary treatment criteria, so I think the member does not need to fear that or have concerns.

Dr A.D. BUTI: I am not actually comforted by the reassurance, parliamentary secretary. If the parliamentary secretary or the minister says X, Y or Z will happen, but there is no legislative mandatory provision for it, we are just relying on the goodwill and professionalism of the mental health fraternity to ensure that X, Y or Z does happen. As we know, there is a long history of X, Y or Z not happening, but I do not think I can take that matter any further.

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

Ms A.R. MITCHELL — by leave: I move —

That amendments 19 to 21 made by the Council be agreed to.

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

Ms A.R. MITCHELL — by leave: I move —

That amendments 22 and 23 made by the Council be agreed to.

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

Ms A.R. MITCHELL: I move —

That amendment 24 made by the Council be agreed to.

Dr A.D. BUTI: In regard to amendment 24 that the parliamentary secretary has moved, can the parliamentary secretary explain the actual change and the effect it will have? How is it different from what is in the bill before us? I am not 100 per cent sure.

Ms A.R. MITCHELL: Clause 126 sets out the circumstances in which a patient with a community treatment order would be in breach of that order. Under the current drafting, the community treatment order breach process is available only if there is a significant risk of serious deterioration. It is not available in response to the other types of risk specified in the clause 25 criteria for an involuntary treatment order. The CTO breach process is a less restrictive option than making an inpatient treatment order. As such, this should be available as an option even if the person technically meets the criteria for an inpatient treatment order. The amendment to clause 126 agreed to by the Council would achieve this outcome.

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

Ms A.R. MITCHELL: I move —

That amendment 25 made by the Council be agreed to.

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

Ms A.R. MITCHELL: I move —

That amendment 26 made by the Council be agreed to.

Dr A.D. BUTI: I will not go into a repetition of the discussion, but I again express concerns that we are removing the mandatory requirement in respect to mental or physical condition.

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

Ms A.R. MITCHELL — by leave: I move —

That amendments 27 to 42 made by the Council be agreed to.

Dr A.D. BUTI: I think this is a good series of amendments, although I note that we are deleting "nominated person" as a result of the amendments. As defined under clause 4, "nominated person" means a person nominated under section 273(1). Clause 273(1) states —

A person, including a child, may nominate another person to be the person's nominated person.

That is as clear as mud, but anyway! I think it is great that the government has now included "or other personal support person". However, what effect will the removal of "nominated person" have? Is the parliamentary secretary saying that that is basically the same thing as "other personal support person"? I ask for clarification, really.

Ms A.R. MITCHELL: I can assure the member that we are not deleting "nominated person". The personal support persons include the nominated persons, as demonstrated in clauses 4 and 7.

Dr A.D. BUTI: The definition of "nominated person" is not being deleted, because it remains in clauses 4 and 273, but the government is deleting it from the amendments that it has moved en bloc.

Ms A.R. MITCHELL: I refer the member to "personal support person" on page 8 of the bill. That covers the concern of the member.

Dr A.D. BUTI: I am not complaining about having "personal support person" in the bill—I think that is a good idea—but that is not the same as a nominated person, though, is it? "Nominated person" is defined, as is "personal support person", and they are different. I am glad that the government has included —

Ms A.R. Mitchell: But, member, it does include it.

Dr A.D. BUTI: It does include what? Does the definition of "personal support person" include a nominated person?

Ms A.R. Mitchell: Yes.

Dr A.D. BUTI: Let us see whether that is the case. Yes; I thank the parliamentary secretary very much.

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

Ms A.R. MITCHELL: I move —

That amendment 43 made by the Council be agreed to.

Dr A.D. BUTI: As a result of this amendment, a new paragraph will be added to clause 212, as follows —

(2) A person is not secluded merely because the person is alone in a room or area that the person is unable to leave because of frailty, illness or mental or physical disability.

I can understand what this amendment seeks to do, but I have a major concern with it. The current clause 212 states —

Seclusion is the confinement of a person who is being provided with treatment or care at an authorised hospital by leaving the person at any time of the day or night alone in a room or area from which it is not within the person's control to leave.

That is fine; it would be a common definition of seclusion. However, this proposed amendment states that just because a person has been left in a room and is unable to leave that room because of the physical or mental disability, it does not mean that person is secluded. I think it does. If a person is unable to leave the room because of a mental disability, they should be assisted to leave the room. This is just a backhanded way to increase the power to require people to be secluded. That is an incredibly dangerous road for us to be going

down. If a person is unable to leave a room because of disability, illness or fragility, there should be a carer to allow them to exit the room. This is an incredibly dangerous amendment to be allowed to pass this Parliament.

Ms A.R. MITCHELL: The member has raised an important issue and, if he does not mind, I will give quite a detailed explanation of the amendment within my time. One of the aims of the bill was to remove uncertainty for clinicians and patients where there is some uncertainty in the act in these areas. The amendment agreed to by the Council to clause 212 would remove the uncertainty about what does and does not constitute seclusion. I think the member is very comfortable with that. The current drafting may create ambiguity about whether or not a person who is alone in a room or an area that the person is unable to leave merely because of frailty, illness or mental or physical disability would be secluded for the purposes of part 14, division 5. Situations in which a person is alone in a room and is unable to leave of his or her own volition are inevitable in authorised hospitals, especially those that cater for older adults.

Examples include where a person with impaired mobility is in their bedroom alone at night, or a staff member leaves a person alone for a brief period while attending to other urgent matters. The seclusion provisions are not and have never been intended to regulate unavoidable scenarios of this nature. If such cases were to be captured by the definition, the administrative burden on staff would be unmanageable. The effect of the amendment is to ensure that the mere fact of person's solitude does not give rise to a host of statutory obligations. Concerns with the current definition were first brought to the attention of the Chief Psychiatrist and the Mental Health Commission by clinical staff working in the area of older adult mental health. These concerns were subsequently discussed with the Department of Health legal and legislative services. There has been no definitive advice that the existing definition would be interpreted in an undesirably broad matter. Rather, the purpose of the amendment is to avoid what is considered to be reasonable concern. The wording was prepared for us by Parliamentary Counsel.

Dr A.D. BUTI: I thank the parliamentary secretary for that explanation, but it provides me with very little comfort. Nowhere in this amendment is a time period mentioned. I would not be concerned, and I do not think anyone would be concerned, if someone were left alone for half an hour. This amendment just states that the person has been left alone in a room; it does not have a prescribed time limitation. If this amendment included a prescribed period of time, I would be more comfortable and more relaxed about the proposition. There can be unintended consequences of any legislative provision, and I do not think that we would seek to say that leaving someone alone for half an hour or an hour, or even maybe two hours, which may be very difficult to manage, would necessarily come under the definition of seclusion. However, this proposed amendment proposes no time limit at all. At a couple of stages in the parliamentary secretary's explanation, she mentioned "immediate" or "short period of time". That is not provided for in this amendment. This amendment is an incredibly dangerous proposition. It may have been approved by the other place, but I would not be comfortable with allowing it to pass this house without any opposition.

Ms A.R. MITCHELL: The inclusion in the amendment of the word "merely" is a factor that will give the member comfort in that clause. It is not that there is inaction on the part of staff—the amendment does not fit in with that—but in a broader medical situation, nursing policy determines the time constraints that are put on each patient, so there is variation from patient to patient at the best of times. It would depend on the condition of the patient.

Dr A.D. BUTI: The word "merely" does not provide me with any comfort. You would be very well aware, Mr Acting Speaker (Mr I.M. Britza), of a case that came before a committee of which we were both members, of a young boy with a disability who was left in a room at an aged care facility. Because of staff and management issues—not enough staff et cetera—and to supposedly protect him from other clients in the facility, he was left there all day to watch television, and was not allowed to leave the room. That was a tragic case, and I know that the Acting Speaker also understands that case. This proposed paragraph has unintended consequences, and all for the wrong reasons. The paragraph could quite easily contain time limits. It does not contain time limits. As we very well know at the moment the mental health system is under incredible strain and stress, with not enough staff to cope with the demands on the system, and I can foresee a scenario in which people are left in rooms for extended periods and are unable to remove themselves from those rooms because of a mental or physical disability. As a result of this amendment, staff will have the legislative protection to guard them against any complaint. Therefore, this amendment is a bad amendment and should not be allowed to stand.

Division

Question put and a division taken, the Acting Speaker (Ian Britza) casting his vote with the ayes, with the following result —

Ayes (29)

Mr P. Abetz	Ms E. Evangel	Mr R.S. Love	Mr D.T. Redman
Mr F.A. Alban	Mr J.M. Francis	Mr W.R. Marmion	Mr A.J. Simpson
Mr I.C. Blayney	Mrs G.J. Godfrey	Mr P.T. Miles	Mr M.H. Taylor
Mr I.M. Britza	Dr K.D. Hames	Ms A.R. Mitchell	Mr T.K. Waldron
Mr G.M. Castrilli	Mr C.D. Hatton	Mr N.W. Morton	Mr A. Krsticevic *(Teller)*
Mr M.J. Cowper	Mr A.P. Jacob	Dr M.D. Nahan	
Ms M.J. Davies	Mr R.F. Johnson	Mr D.C. Nalder	
Ms W.M. Duncan	Mr S.K. L'Estrange	Mr J. Norberger	

Noes (17)

Ms L.L. Baker	Mr D.J. Kelly	Mr P. Papalia	Mr B.S. Wyatt
Dr A.D. Buti	Mr F.M. Logan	Mr J.R. Quigley	Mr D.A. Templeman *(Teller)*
Ms J. Farrer	Mr M. McGowan	Ms M.M. Quirk	
Ms J.M. Freeman	Ms S.F. McGurk	Ms R. Saffioti	
Mr W.J. Johnston	Mr M.P. Murray	Mr C.J. Tallentire	

Pairs

Mrs L.M. Harvey	Mr P.C. Tinley
Dr G.G. Jacobs	Mrs M.H. Roberts
Mr J.H.D. Day	Mr R.H. Cook
Mr C.J. Barnett	Mr P.B. Watson

Question thus passed; the Council's amendment agreed to.

Ms A.R. MITCHELL: I move —

That amendment 44 made by the Council be agreed to.

Dr A.D. BUTI: This is really a point of explanation, parliamentary secretary. This new amendment states —

(2A) A person is not being physically restrained merely because the person is being provided with the physical support or assistance reasonably necessary —

(a) to enable the person to carry out daily living activities; or

(b) to redirect the person because the person is disoriented.

I understand that a person who becomes disoriented may need to be provided with assistance, but what is meant by "redirect" and what amount of physical force can be used to redirect someone?

Ms A.R. MITCHELL: It is probably difficult to list each specific circumstance in which that might occur, but the member is right that the redirection of patients —

The ACTING SPEAKER (Mr I.M. Britza): Excuse me, parliamentary secretary. Members, the chitchat is still a bit loud. If you want to continue the conversation, I ask you to leave the chamber.

Ms A.R. MITCHELL: Clinicians sometimes need to redirect patients and once again how that redirection might occur depends on the situation the patient finds themselves in. We are talking about people with dementia or someone wandering into someone else's room, but, once again, the redirection depends on the person being dealt with. I have to be careful how I say this, but it depends on the person and the idea is to make sure that there is a difference between redirecting and restraint.

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

Ms A.R. MITCHELL: I move —

That amendment 45 made by the Council be agreed to.

Dr A.D. BUTI: I do not necessarily have any issue with this amendment, but could the parliamentary secretary just provide an explanation about the reason behind the amendment and the effect of it?

Ms A.R. MITCHELL: The clause in the bill requires a medical practitioner to attend to a person who arrives at a hospital for the purpose of examining them to assess their physical condition. Of course, it may not be possible for the medical practitioner to conduct an adequate examination at the time of the initial visit—for example, when the person is highly uncooperative or aggressive. The drafting as it stands would mean that the medical practitioner would not be under any obligation to try again at a later stage, so the effect of amendment 45 agreed to by the Council would be to require further efforts at reasonable intervals until the physical health examination is conducted. The requirement to attend at reasonable intervals will be limited by clauses 241(2)(b) and (c).

Paragraph (b) applies when the person is a voluntary patient and informed consent for examination is not provided by the patient or the person authorised by law to consent on their behalf. The rationale is that a voluntary patient should not be physically examined without consent. Paragraph (c) applies when the person can no longer be examined because they have left the hospital, including when they have been released, discharged, are absent without leave or have been transferred to another hospital. The amendment agreed to by the Council reflects the fact that there are links between mental and physical illness that cannot be ignored.

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

Ms A.R. MITCHELL: I move —

That amendment 46 made by the Council be agreed to.

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

Ms A.R. MITCHELL: I move —

That amendment 47 made by the Council be agreed to.

Dr A.D. BUTI: This is an amendment to clause 241 on page 178 of the bill. The amendment is as follows —

To delete "purposes of subsection (2)" and insert —

purpose of assessing under this section the person's physical condition

This is the issue about the person's physical condition versus his mental condition. Can the parliamentary secretary just give us an explanation for the reasoning behind this amendment? I am sure that it is straightforward, it is just that I am not picking it up.

Ms A.R. MITCHELL: This amendment has been recommended by Parliamentary Counsel to clarify the language around the medical practitioner attending for the purpose of examining the person in order to assess their physical condition.

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

Ms A.R. MITCHELL: I move —

That amendment 48 made by the Council be agreed to.

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

Ms A.R. MITCHELL: I move —

That amendment 49 made by the Council be agreed to.

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

Ms A.R. MITCHELL: I move —

That amendment 50 made by the Council be agreed to.

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

Ms A.R. MITCHELL — by leave: I move —

That amendments 51 and 52 made by the Council be agreed to.

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

Ms A.R. MITCHELL: I move —

That amendment 53 made by the Council be agreed to.

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

Ms A.R. MITCHELL: I move —

That amendment 54 made by the Council be agreed to.

Dr A.D. BUTI: It is a good amendment to move, parliamentary secretary. I presume this amendment picks up the concern the opposition expressed in debate in this place previously about preventing certain people who provide legal aid–type services from being paid for their work; and, if so, that is a very good move.

Ms A.R. MITCHELL: Member, this addresses your concerns.

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

Ms A.R. MITCHELL: I move —

That amendment 55 made by the Council be agreed to.

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

Ms A.R. MITCHELL: I move —

That amendment 56 made by the Council be agreed to.

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

Ms A.R. MITCHELL: I move —

That amendment 57 made by the Council be agreed to.

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

Ms A.R. MITCHELL: I move —

That amendment 58 made by the Council be agreed to.

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

Ms A.R. MITCHELL: I move —

That amendment 59 made by the Council be agreed to.

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

Ms A.R. MITCHELL: I move —

That amendment 60 made by the Council be agreed to.

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

Ms A.R. MITCHELL: I move —

That amendment 61 made by the Council be agreed to.

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

Ms A.R. MITCHELL — by leave: I move —

That amendments 62 to 73 made by the Council be agreed to.

Dr A.D. BUTI: Amendment 68 is an addition to clause 400 to allow an application for a declaration to be made by involuntary patients et cetera. The bill states that an application cannot be made under section 398(1) for a treatment order that ceased to be in force more than six months ago unless the applicant shows good reason for the delay. This places a time limitation on the ability to bring an application, which is not unusual in the legal jurisdiction as the statute of limitations is often longer than six months. Here we are dealing with people who have had a mental illness, and if they are an involuntary patient it may be quite a severe mental illness. Is six months a sufficient time limitation period, when normally the statute of limitations period in civil action is six years, although if the action is against the state they have to seek leave after one year and in contract law it is three years? Here the period is six months, unless a person can show good reason for the delay. Why allow only six months? When the bill refers to "show good reason" for the delay, what are some of the good reasons? Is it, as in some jurisdictions, being able to overcome the statute of limitations discoverability rule, whereby the person finds at a later date that an illegality was committed and before that date there was no reasonable way for them to find out? Is it because there has been some fraud or some hindrance to the authorities finding out? What are some of those good reasons that will allow a person to bring an action after the six-month prescribed period, and, also, why is the period only six months?

Ms A.R. MITCHELL: I will just give the member some background before I answer those specific questions. The normal time limit for seeking review is six months, but it can be extended at the discretion of the tribunal. This position 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 diminishes over time and, as such, the legislation should encourage applications to be submitted in a reasonably timely fashion. Certainly the examples the member used are the sorts of things that would be taken into consideration—and illness as well.

Dr A.D. BUTI: As the parliamentary secretary said, this person may have had a severe mental illness—certainly if they were an involuntary patient. I can understand a time limitation being placed on the psychiatrist or mental health advocate, but when it is placed on the involuntary patient, I have concerns that it is only six months when most jurisdictions provide a much longer period than six months in which to bring an action. Granted, if someone wishes to bring an appeal, there may only be 21 days or whatever, but we are not looking at that scenario; we are looking at someone seeking to bring an action to question the treatment order. Often they will have had major traumatic experiences; they have had a mental illness, otherwise they would not have been an

involuntary patient, and we are only allowing them six months in which to bring an application. The parliamentary secretary mentioned the issue of witnesses and the freshness of the evidence. That is always an issue in legal actions, but it is normally six years in the civil jurisdiction and sometimes three years under contract law. Of course, if it is the state, it can be one year, but it would usually go beyond one year. I think it is incredibly unfair to allow only six months for a cohort of the population who are particularly vulnerable and may take considerable time to work through the process to recognise that they wish to bring an action, and it will prevent many, many involuntary patients who may wish to query the treatment order that they were subject to from doing so.

Ms A.R. MITCHELL: The member's concerns about a person in that situation and the time frame are covered in that extensions can be given, and are given quite readily. The reasons are quite broad. The circumstances that would apply to a person in this situation would certainly be taken into consideration.

Dr A.D. BUTI: The parliamentary secretary says that the reasons are quite broad, but the fact that someone has to make an application to overcome the time limit is another stress that will be placed on a person who has had a mental condition. Surely it would be a better mental health practice to not put them through that process if at all possible. Of course there needs to be a time limit of some degree, but a time limit of only six months is harsh and inconsistent with many other tribunal and court jurisdictions, and is particularly harsh for the cohort of people we are dealing with under this legislation.

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

Ms A.R. MITCHELL: I move —

That amendment 74 made by the Council be agreed to.

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

Ms A.R. MITCHELL — by leave: I move —

That amendments 75 and 76 made by the Council be agreed to.

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

Ms A.R. MITCHELL: I move —

That amendment 77 made by the Council be agreed to.

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

Ms A.R. MITCHELL: I move —

That amendment 78 made by the Council be agreed to.

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

Ms A.R. MITCHELL — by leave: I move —

That amendments 79 and 80 made by the Council be agreed to.

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

Ms A.R. MITCHELL — by leave: I move —

That amendments 81 to 86 made by the Council be agreed to.

Dr A.D. BUTI: I refer the parliamentary secretary to amendment 85, which amends clause 447. I think this is a very welcome amendment. I assume that it is in response to the various debates we had about the need to allow people to have legal representation when possible.

Ms A.R. MITCHELL: That is the case, member.

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

Ms A.R. MITCHELL: I move —

That amendment 87 made by the Council be agreed to.

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

Ms A.R. MITCHELL: I move —

That amendment 88 made by the Council be agreed to.

Dr A.D. BUTI: I just seek some clarification about the word "guardian". It has been a while since I have had a proper look at the bill. There is a definition, so that is fine.

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

Ms A.R. MITCHELL — by leave: I move —

That amendments 89 and 90 made by the Council be agreed to.

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

Ms A.R. MITCHELL: I move —

That amendment 91 made by the Council be agreed to.

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

Ms A.R. MITCHELL: I move —

That amendment 92 made by the Council be agreed to.

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

Ms A.R. MITCHELL — by leave: I move —

That amendments 93 and 94 made by the Council be agreed to.

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

Ms A.R. MITCHELL: I move —

That amendment 95 made by the Council be agreed to.

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

Ms A.R. MITCHELL: I move —

That amendment 96 made by the Council be agreed to.

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

Ms A.R. MITCHELL: I move —

That amendment 97 made by the Council be agreed to.

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

Ms A.R. MITCHELL — by leave: I move —

That amendments 98 and 99 made by the Council be agreed to.

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

Ms A.R. MITCHELL: I move —

That amendment 100 made by the Council be agreed to.

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

The Council acquainted accordingly.