MENTAL HEALTH BILL 2013

Consideration in Detail

Resumed from an earlier stage of the sitting.

Clause 483: Registry staff —

Debate was interrupted after the amendment moved by Dr A.D. Buti had been partly considered.

Dr A.D. BUTI: Before we adjourned for 90-second statements, I was in the process of reading the conclusion of the correspondence from Ms Strauss to Hon Helen Morton. The last paragraph of her conclusion states —

> The types of clauses I am advocating would make it clear to consumers, stakeholders, staff of the Tribunal and other public officers employed by the Commission, authority, or department of the day responsible for mental health that the Tribunal is independent and that the President is responsible for the development, administration and performance of the Tribunal. These types of provisions would allow the Tribunal to be more effective and efficient and not beholden to the government department or authority that implements the Mental Health Act.

Ms Strauss' correspondence is quite interesting and important given that in the debate the other night, the parliamentary secretary said that it was important that the tribunal be seen to be independent; that there was a separation of powers.

The ACTING SPEAKER (Mr P. Abetz): Members, can we please keep the conversations quiet or take them outside of the chamber? Thanks.

Dr A.D. BUTI: We know that there is no constitutional requirement for a separation of powers. Under the state's constitution, there is no necessity for a separation of powers, but it is a convention in state politics. The other important thing is that by the parliamentary secretary refusing to agree to the amendment that the president should be a lawyer, it makes it even more important that this amendment is approved. We will have a situation that is permissible under this bill where the president may not be a lawyer, and he or she needs to preside over matters of complex legal principle. The parliamentary secretary may say they will have a lawyer on the tribunal; that may be the case but that lawyer will not be directing the registrar or staff. It needs to be clear in the legislation that the registrar and the staff of the registry are there to assist the president. It was a big mistake not to agree to the amendment I moved in regard to the president being a former judge or a lawyer of at least eight years' standing. In any case, that makes it even doubly important that an amendment such as the one that we are dealing with now is approved and supported.

Ms A.R. MITCHELL: I thank the member for Armadale, but this bill creates quite a clear hierarchy about authority. The president has the authority over the registrar, and then of course the staff are appointed to assist the registrar. The registrar is subject to the direction of the president; the staff are subject to the direction of the registrar. There is a clear hierarchy so that everyone is quite clear as to what they do.

Dr A.D. BUTI: A clear hierarchy does not necessarily equate to clear divisional responsibilities or a clear chain of command or a clear strategy to be implemented in the workings of the tribunal. Really, how can the amendment I put forward be offensive to the government? It is there to assist in the legislative framework that the government has spent considerable time in drafting and consulting. This measure will only improve the workings of the tribunal. As noted in the correspondence from Ms Strauss, there are concerns about the Mental Health Tribunal. That is why it is important, whenever we have the opportunity to introduce new legislation, that we do it in a way that provides the best possible outcomes and ensures that we have a proper understanding on levels of responsibility and what that responsibility has to comply with, and also of the roles and functions that need to be complied with.

Division

Amendment put and a division taken, the Acting Speaker (Mr P. Abetz) casting his vote with the noes, with the following result —

Ayes (13)

Dr A.D. Buti	Mr D.J. Kelly	Mr P. Papalia	Mr D.A. Templeman *(Teller)*
Mr R.H. Cook	Mr F.M. Logan	Ms R. Saffioti	
Ms J.M. Freeman	Mr M. McGowan	Mr P.C. Tinley	
Mr W.J. Johnston	Ms S.F. McGurk	Mr B.S. Wyatt	

Noes (27)

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

Pairs

Ms J. Farrer	Mr T.R. Buswell
Mrs M.H. Roberts	Mr C.J. Barnett
Mr J.R. Quigley	Mr A.J. Simpson
Mr M.P. Murray	Mr R.S. Love
Mr C.J. Tallentire	Mr J.E. McGrath
Ms L.L. Baker	Mr M.J. Cowper
Mr P.B. Watson	Mr F.A. Alban

Amendment thus negatived.

Clause put and passed.

Clause 484: Delegation by registrar —

Dr A.D. BUTI: This clause relates to what we mean by "delegation" and what is being delegated. I do not expect the parliamentary secretary to respond, but I wish to put on the record that we have to be very careful when we talk about "delegation of duty" in legislation. The parliamentary secretary may say that delegation of duty is not delegating responsibility. I think that is a very dangerous way to interpret that terminology in legislation. If we ever have to rewrite or amend this bill—hopefully, long after the parliamentary secretary and I have left this Parliament—it will be made clear that there is no delegation of responsibility or legal liability.

Clause put and passed.

Clauses 485 to 488 put and passed.

Clause 489: Meetings of members —

Dr A.D. BUTI: What rules are in place with regard to members missing meetings? If they miss three or four meetings in a row will their service be terminated? What is the criterion? The clause states —

> … must meet as often as necessary for the effective and efficient operation of the Tribunal.

Is there a compulsion for members to attend? How many apologies can they have and how many meetings can they miss without seeking leave of absence? If they do not seek leave of absence, when do we have a determination about their suitability to continue in the role?

Ms A.R. MITCHELL: There is a way of scheduling meetings, but the member has certainly made a point. We will ensure that that is in the rules before the tribunal.

Clause put and passed.

Clause 490: Terms used —

Dr A.D. BUTI: The clause we are dealing with comes under part 22, "Review by State Administrative Tribunal", division 1. I move —

> Page 330, line 8 — To delete "direction or declaration" and substitute —
>
> direction, declaration or recommendation

I mentioned this previously. I know that recommendations are not mandatory but they are incredibly important, powerful tools that can be used by a tribunal. I believe that they should be able to be reviewed by SAT. A recommendation may go to matters of reputation of the patient, which is like a declaration in many respects. The only difference between a recommendation and a declaration is that a declaration is declaring something that is legal or mandated; it does not generally result in any action. A recommendation may be recommending some action, even though it is not mandatory, but it can have significant effect on the status of the patient and could

also affect their reputation. Reputation is one of the criteria that could be used to instigate an involuntary order on a patient.

Ms A.R. MITCHELL: The amendment that the member proposed to clause 378 was not supported; therefore, we will not support this amendment either. The definition of "decision" in the State Administrative Tribunal should be consistent. Recommendations are not binding and, as such, should not be reviewable by the State Administrative Tribunal.

Amendment put and negatived.

Clause put and passed.

Clause 491 put and passed.

Clause 492: Determination of questions of law before Mental Health Tribunal —

Dr A.D. BUTI: I know that part 22 deals with the State Administrative Tribunal, but this clause is headed "Determination of questions of law before Mental Health Tribunal". This is where SAT is reviewing a decision of the Mental Health Act. The clause states —

> ***question of law*** does not include a question of mixed law and fact.

However, as the parliamentary secretary would know, under clause 438 on page 302, "Deciding questions in proceedings", a question of law includes a question of mixed law and fact. I understand that these are different bodies. When we debated clause 438, I was surprised when the parliamentary secretary said that under clause 438 a question of law included a question of mixed law and fact and that should flow on to clause 492. It possibly should not be in clause 492 because we are dealing with SAT. As the parliamentary secretary can see, there are some inconsistencies there because "question of law" in clause 492 does not include "mixed law and fact" but it does in clause 438. Could the parliamentary secretary explain why?

Ms A.R. MITCHELL: We have taken advice from Parliamentary Counsel and that is how it has been recommended it be written.

Dr A.D. Buti: Why did they recommend that?

Ms A.R. Mitchell: We just took the answer; I do not know.

Dr A.D. Buti: Are you able to make a commitment that you will provide that at some stage?

Ms A.R. Mitchell: At a later time, rather than holding up proceedings now.

Dr A.D. Buti: When we reconvene?

Ms A.R. MITCHELL: My advisers just asked me when the member for Armadale is asking for the information to be provided. I presume the member is talking about the next sitting, not today.

Dr A.D. Buti: Of course—we are going to proceed with this bill, unless you want to adjourn.

Ms A.R. MITCHELL: No; this is just a clarification.

Dr A.D. Buti: All I am asking is that you provide that information by the time Parliament reconvenes in three weeks' time so then I can refer to it with my colleagues in the other place.

Ms A.R. MITCHELL: Yes, we will.

Clause put and passed.

Clauses 493 to 496 put and passed.

Clause 497: Appearance and representation —

Dr A.D. BUTI: Clause 497 deals with appearances and representation, and, as I have stated previously, throughout this bill there has been a deliberate attempt—I doubt this is an accidental attempt—to reduce the legal representation of patients or people who come under the jurisdiction of this bill. One way that has been done is by generalising the issue of representation and by listing parties time and time again who can represent someone, yet very rarely has that list of parties included a lawyer. It is an absolute folly to say that because there may be an agreement between the patient and the lawyer, it will override an exhaustive list in this bill, which will then become legislation. As we all know, statute overrules the common law. Clause 497(5) states —

> Despite the *State Administrative Tribunal Act 2004* section 39(1), a party to a proceeding under this Part may be represented by a person who is not a legal practitioner or a person referred to in section 39(1)(a) to (f) of that Act.

Section 39 of the State Administrative Tribunal 2004, "Representation in proceedings", states —

> (1) At a hearing in a proceeding before the Tribunal a party to the proceeding may appear in person or may be represented by another person, but a party cannot be represented by a person other than a legal practitioner unless —

I will go through that. Can the parliamentary secretary see the difference here? The SAT act puts the legal practitioner up-front. This bill tries to diminish the status or the presence of the legal practitioner, and in fact tries to make them an invisible person. I will continue reading section 39 of the SAT act —

> (a) the party is a body corporate and the person is a director, secretary, or other officer of the body corporate; or
>
> (b) the party is a public sector body as defined in section 3(1) of the Public Sector Management Act 1994 and the person is a public sector employee authorised by the party to represent it; —

Once again this goes further to my argument about the folly of saying that if there is an agreement between a lawyer and a patient or a party, it means they automatically have standing. That is not the case because this SAT act actually includes the words "authorised by the party to represent them". I continue with section 39 of the SAT act —

> (c) the party is a party in the course of or because of the performance, or purported performance, of his or her duties as a public sector employee and the person is another public sector employee authorised by the party to represent him or her; or
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> (d) the person has particular knowledge or experience relevant to the matter that is being dealt with (other than experience obtained as or representing a party in another Tribunal proceeding); or
>
> (e) the Tribunal agrees to that person representing the party, and any conditions imposed by the Tribunal are satisfied; or
>
> (f) the regulations or the rules authorise it.

The parliamentary secretary's advisers may have told her that the legislation I have just read out deals with the State Administrative Tribunal. That may be the case, but in many respects the Mental Health Tribunal has the same legal status. The State Administrative Tribunal is not made up of only lawyers; although the president is of course a lawyer, not everyone else is necessarily one, and that also goes for the Mental Health Tribunal. Why throughout this bill is the express status of lawyers diminished, when the State Administrative Tribunal Act does things the other way? It states that a person cannot be represented unless they are represented by a lawyer, unless X, Y or Z under section 39 applies. I am curious why throughout this bill there is a continuous policy and practice of not referring to lawyers. Is it because if a lawyer is involved, it may provide some difficulties in restricting the rights and freedoms of a patient?

Mr D.A. TEMPLEMAN: I am very interested in what the member is saying and I would like him to continue.

Dr A.D. BUTI: Has the government given undue weight to the advice of the medical profession? Of course it should give weight to the advice of the medical profession in medical matters, but when we are looking at quasi-legal or legal procedures and the review of rights, the status and the role to be played by lawyers should not be diminished, because they will understand and know the rights and freedoms of patients more than a doctor will. It would be absurd to say that a lawyer would know more than a psychiatrist about types of medication, and it would be equally as absurd to say that a psychiatrist would know more than a lawyer about procedural matters in regards to the protection of the rights and freedoms that people have under this legislation. Once again, I refer back to clause 10, which outlines the objects of the bill, and up there of paramount importance is the minimum restriction on the rights and freedoms of patients and the preservation of their dignity.

Ms A.R. MITCHELL: I do not know how to reassure the member and cannot say this often enough: this bill does not seek to limit the involvement of legal practitioners; however, it does recognise that patients should have choice regarding representation, and that has been the basis throughout this bill.

Dr A.D. BUTI: With all due respect, parliamentary secretary, unfortunately I am not reassured by those words. I would be reassured by an appropriate express recognition of lawyers as being of at least equal standing to the mental health advocates, carers et cetera that have been listed in numerous clauses. The parliamentary secretary's words are not reassuring; I would be reassured by express legislative recognition of the role of lawyers.

Clause put and passed.

Clauses 498 to 500 put and passed.

Clause 501: Grounds of appeal —

Dr A.D. BUTI: I refer to paragraph (b), which reads —

> that there is another sufficient reason for hearing an appeal against the decision or order.

Paragraph (a) refers to —

> that the State Administrative Tribunal —
>
> (i) made an error of law or of fact, or of both law and fact; or
>
> (ii) acted without jurisdiction or in excess of its jurisdiction; or
>
> (iii) did both of those things;

I am not asking the parliamentary secretary for a definition of what "sufficient reason" means; I am asking for some examples of another sufficient reason for hearing an appeal against a decision or order.

Ms A.R. MITCHELL: An example would be something to do with academic interest.

Dr A.D. BUTI: What does the parliamentary secretary mean by "academic interest"?

Ms A.R. MITCHELL: If the interpretation of provisions had to be clarified.

Dr A.D. BUTI: We will not get into a major discussion about that, but I still find that unusual. Would that person not just be called as a witness? I do not know whether that would be a ground of appeal. We are looking here at grounds of appeal; how would that be a ground of appeal? This is a ground of appeal against a decision of the Mental Health Tribunal to be reviewed by the State Administrative Tribunal. I am not sure how academic interest or an academic opinion is a ground of appeal. When the parliamentary secretary provides me with the advice on the question of law and question of fact, can she also ask counsel to provide some examples?

Ms A.R. Mitchell: Yes, we can.

Clause put and passed.

Clauses 502 to 504 put and passed.

Clause 505: Appointment —

Dr A.D. BUTI: This clause deals with the appointment of the Chief Psychiatrist and states —

> (1) There is to be a Chief Psychiatrist who is appointed by the Governor on the recommendation of the Minister.
>
> (2) Only a psychiatrist is eligible to be appointed as the Chief Psychiatrist.

The requirement that the Chief Psychiatrist be a psychiatrist seems to make sense; someone cannot be the Chief Psychiatrist if they are not a psychiatrist. However, it becomes a bit meaningless when we look at the definition of "psychiatrist" in the Mental Health Bill 2013. On page 9, clause 4 states —

> ***psychiatrist*** means a medical practitioner —
>
> (a) who is a fellow of the Royal Australian and New Zealand College of Psychiatrists; or
>
> (b) who holds specialist registration under the *Health Practitioner Regulation National Law (Western Australia)* in the specialty of psychiatry; or
>
> (c) who holds limited registration under the *Health Practitioner Regulation National Law (Western Australia)* that enables the medical practitioner to practise in the specialty of psychiatry;

That definition is identical, I think, to that in the next bill we will be dealing with—the Mental Health Legislation Amendment Bill 2013—but the definition basically says that the psychiatrist has to be a medical practitioner; someone could be registered under the various laws referred to and have minimal psychiatry experience. A medical practitioner without any psychiatric qualifications could obtain limited registration under the Health Practitioner Regulation National Law (WA) Act 2010 to work as a psychiatrist and exercise all the powers of a psychiatrist under the bill, including being the Chief Psychiatrist or, for that matter, a member of the Mental Health Tribunal. Even the Chief Psychiatrist or the psychiatrist member of the tribunal is not required to have a psychiatry qualification or registration. The Chief Psychiatrist just has to be a psychiatrist as defined by the bill. That is interesting, because the parliamentary secretary's advisers would know the case of RD v MHRB

[2013] WASAT 80, which was the matter of Dr S who did not have psychiatric qualifications but was approved to work as a psychiatrist by the Western Australian board of the Medical Board of Australia and also under the Australian Health Practitioner Regulation Agency. I am a bit concerned that a Chief Psychiatrist could be appointed who could, in effect, be someone with incredibly limited experience as a psychiatrist. There is no requirement that the psychiatrist has certain qualifications or has been a psychiatrist for any length of time.

Ms A.R. MITCHELL: As the member stated, the definition is appropriate and has already been dealt with under clause 4. Limitation on the registration is afforded only to persons with appropriate skills; it is certainly not limited skills. I have been advised very clearly by Dr Padgett that it is very extensive skills and experience, as determined by the medical board and Royal Australian and New Zealand College of Psychiatrists. It is very extensive.

Dr A.D. Buti: Yes, but there is no length of time they have to be a psychiatrist before being appointed Chief Psychiatrist, is there?

Ms A.R. MITCHELL: No, it is not based on years of experience; it is based on qualifications.

Dr A.D. BUTI: That is interesting. I have a long list of qualifications, but not necessarily that many years as a practising solicitor. If it going to be based just on qualifications, not taking into account experience, I think that is a problem.

Ms A.R. MITCHELL: I probably could assure the member that, once again, it would be a very competitive process and the most suitable person would be chosen as Chief Psychiatrist.

Dr A.D. BUTI: We have to rest assured that everything will be okay because it will be a competitive process. I think we have been without a director general of the health department for a length of time, and I am sure that is a competitive process, too. Just because there is a competitive process does not mean the position will be filled with the properly qualified person. Surely it would have been prudent to include a length of time and a person's qualifications?

Clause put and passed.

Clause 506: Terms and conditions of appointment —

Dr A.D. BUTI: Subclause (1) states —

> The Chief Psychiatrist —
>
> (a) holds office for the period (not exceeding 5 years) specified in the instrument of appointment; and
>
> (b) is eligible for reappointment.

If the Chief Psychiatrist is eligible for reappointment, I presume that can be for another five years; it is not stated in the bill. Also, could the Chief Psychiatrist then be reappointed again for another five years? Is there any legislative prohibition on how many times someone can be reappointed?

Ms A.R. MITCHELL: Firstly, the person could be reappointed subject to performance review and things like that, and there is no limitation on the number of times that reappointment could occur, but it will always be subject to performance.

Dr A.D. BUTI: Can the reappointment be for a period of greater than five years?

Ms A.R. Mitchell: No.

Dr A.D. BUTI: How do we know that? We do not know that from the bill. It reads, "is eligible for reappointment".

Ms A.R. Mitchell: The first part —

Dr A.D. BUTI: No, the first part is about appointment. It reads, "holds office for the period (not exceeding 5 years) specified in the instrument of appointment".

Ms A.R. MITCHELL: It is my understanding that a reappointment is like an appointment and would be for the same time.

Clause put and passed.

Clauses 507 to 515 put and passed.

Clause 516: Powers generally —

Dr A.D. BUTI: Clause 516 states —

> In addition to the specific powers conferred on the Chief Psychiatrist by this Act or another written law, the Chief Psychiatrist may do anything necessary or convenient for the performance of the functions conferred on the Chief Psychiatrist by this Act or another written law.

That is an incredibly wide power being given to the Chief Psychiatrist who, I still maintain, could be appointed without the appropriate experience. Nothing under the definitions at clause 4 or clause 505 prevents that. These are very wide powers, and the ability for them to be reviewed, in respect of a legal review, is by having the client represented by a lawyer, and the president is not a lawyer. These powers are incredibly wide, and I am wondering why we need such wide powers.

Ms A.R. MITCHELL: It is my understanding that the powers must be linked to a function in a written law, and the minister can also issue directions.

[Quorum formed.]

Clause put and passed.

Clause 517: Review of treatment —

Ms S.F. McGURK: What information would be given to the Chief Psychiatrist in reviewing a decision that a psychiatrist may make about a patient's treatment? Perhaps the parliamentary secretary could explain to me what sort of information the Chief Psychiatrist would be afforded in relation to that particular patient when he or she is reviewing the decision of a psychiatrist in relation to treatment.

Ms A.R. MITCHELL: Some more of that detail comes up in clauses 518 to 520, in reference to the information that can be accessed, but I can assure the member that the Chief Psychiatrist will be able to speak to anyone to get information and to look at all records, and the mental health service has absolutely everything the Chief Psychiatrist needs to get the information required to review a treatment.

Ms S.F. McGURK: I am talking broadly about clause 517, but various paragraphs refer to the need for the Chief Psychiatrist to advise the treating psychiatrist that the decision is going to be reviewed, and what options the Chief Psychiatrist is given in relation to that decision. In respect of a decision to review a psychiatrist's treatment plan for an involuntary patient or mentally impaired patient, I am looking at clause 517(4)(b), which provides for the Chief Psychiatrist to give written directions, but does the Chief Psychiatrist then have to advise the treating psychiatrist what the rationale was in relation to the decision that has been made?

Ms A.R. MITCHELL: Yes.

Ms S.F. McGurk: Where is that outlined?

Ms A.R. MITCHELL: The member quoted it to me: paragraph (b), in relation to written directions about implementing the decision. Paragraph (a) also provides for giving the reasons and written advice.

Ms S.F. McGurk: The reasons for the decision?

Ms A.R. MITCHELL: Yes.

Ms S.F. McGurk: Thank you.

Clause put and passed.

Clauses 518 to 529 put and passed.

Clause 530: Annual report: preparation —

Ms A.R. MITCHELL: I move —

> Page 352, after line 28 – To insert —
>
> (ga) off-label treatment provided during the year and reported under section 303A(3)(b);

This complements new clause 303A, which introduces a new safeguard in relation to the off-label treatment of involuntary patients who are children. The amendment requires that relevant statistical information be included in the Chief Psychiatrist's annual report. This reporting requirement will facilitate greater public scrutiny of prescribing practices.

Mr D.A. TEMPLEMAN: I seek clarification again. We are talking about the parliamentary secretary's amendment that is listed on the notice paper.

The ACTING SPEAKER: It is the amendment to clause 530 on page 13 of the notice paper.

Mr D.A. TEMPLEMAN: Can the parliamentary secretary explain the reason for it?

Ms A.R. Mitchell: The amendment that was introduced earlier about off-label treatment—so it is a safeguard for that.

Mr D.A. TEMPLEMAN: I do apologise, but can the parliamentary secretary explain very briefly exactly what "off-label treatment" means?

Ms A.R. MITCHELL: That was the area in the Therapeutic Goods Administration that refers to some drugs that are specifically used. There are also off-label drugs that are not authorised but that the TGA knows are used. We have therefore put those safeguards in place in line with the member for Armadale's amendment to which we agreed with some extra safeguards. This amendment gives us further safeguards.

Amendment put and passed.

Clause, as amended, put and passed.

Clauses 531 to 533 put and passed.

Clause 534: Delegation by Chief Psychiatrist —

Dr A.D. BUTI: I move —

Page 354, lines 13 to 15 — To delete the lines and substitute —

(1) The Chief Psychiatrist may delegate to a named psychiatrist referred to in subsection (1A) any power or duty of the Chief Psychiatrist under this Act other than this provision and section 543(2) or under another written law.

(1A) For subsection (1), the named psychiatrist —

(a) must be a psychiatrist under paragraph (a) of the definition of ***psychiatrist*** in section 4; and

(b) cannot be a staff member of, or be involved in, the management of a mental health service.

The intention of this amendment is to ensure that a delegation by the Chief Psychiatrist is done in a manner that is appropriate and that the delegation should not be an unfettered delegation. We have to be careful to whom the delegation is made, and it should be done in an appropriate manner. Although it is understandable that the Chief Psychiatrist cannot do everything that they are required to do under the act, and delegation may have to take place, that delegation must be done in a way that is consistent with the appropriate treatment that the patient should receive. That is the reason behind the moving of this amendment. Although, as I have stated in the amendment, it comes with some concern about the definition of "psychiatrist" under subclause 4, in subsequent amendments to this bill I hope that an overall statement will be made about what the delegation of duty actually means in a legal sense.

Ms A.R. MITCHELL: After considerable consideration, we do not support this amendment on the grounds that it would probably create a lot of practical difficulties with no commensurate benefit to patients. Under the Interpretation Act 1984, delegation may be made to a specified person or to persons of a specified class, or may be made to the holder or holders for the time being of a specified office or class of office. Limiting delegations to named psychiatrists would require constant revision of delegations in response to personnel changes and leave arrangements, and the overwhelming majority of psychiatrists are employed in mental health services. The proposed amendment limits the possible delegates to a very limited number of private or academic psychiatrists who may not be sufficiently versed in the legislation. This amendment would make it very difficult and impossible to delegate effectively, leaving the Chief Psychiatrist potentially required to be on call 24 hours a day.

Dr A.D. BUTI: My argument and the reason for the movement of this amendment is that the delegation should be constrained by requiring the delegate to comply with any standard that is set by the Chief Psychiatrist, and that the setting of standards and treatment of care under clause 543(2) should not be a matter that can be delegated by the Chief Psychiatrist. The setting of standards should not be able to be delegated. The whole idea of the Chief Psychiatrist is that they are the Chief Psychiatrist, and they should set the standards of treatment and care. There is a major concern about treating, supervising and consultant psychiatrists involved in the management of the mental health service being eligible as delegates because there could potentially be a conflict of interest. If the Chief Psychiatrist is going to delegate, the delegation should be done with the restraints that are necessary to ensure that proper standards of treatment and care are guaranteed.

Ms A.R. MITCHELL: I am being inundated on all sides to say that the delegation is a matter for the Chief Psychiatrist. I am more than satisfied, given the quick response from my advisers, that the setting of standards

will not be delegated from the Chief Psychiatrist. That is not something that my advisers see as an issue for the member. However, the Chief Psychiatrist, like anyone else who is delegated powers, will be required to exercise the powers and duties in accordance with the legislation and having regard to the objects of the bill. It is not something, therefore, that will be flicked away without any responsibility.

Ms S.F. McGURK: Although other parts of the bill are supported, a number of stakeholders are concerned about this provision in the bill giving the Chief Psychiatrist the ability to delegate in a broad manner. Although some assurances were outlined by the parliamentary secretary today, I understand that there are still some constraints in the bill. I believe the delegated person must be someone who meets the definition of "psychiatrist" and who has some independence; that is, not a staff member or a member of management of a mental health service. I think that would ensure the integrity of not only the Office of the Chief Psychiatrist, but also the entire system that works under this legislation in that office. For that reason, I support the amendment. Having spoken to people in the mental health field about this bill, I can say that there is real concern about the Chief Psychiatrist's ability to delegate to someone who does not have a psychiatric qualification or indeed to someone who is not a practising and registered psychiatrist with all the expertise that that training and qualification entails.

Ms A.R. MITCHELL: I hope that the member does not think that this proposed amendment is limited to only the delegation of the setting of standards. The proposed amendment is greater than that. The problematic aspects of the amendment are those relating to the named psychiatrist and the restriction on delegating a psychiatrist involved in a mental health service. As I said earlier, many psychiatrists are employed in mental health services and the delegation can only be to psychiatrists, so there would not be any difficulty with treatments and things like that. We believe that there are psychiatrists in mental health services who may wish to be considered in areas for delegation.

Dr A.D. BUTI: I am not really sure that the parliamentary secretary is appreciative of the concerns that the member for Fremantle and I have expressed. We are talking about the delegations that the Chief Psychiatrist will be allowed to make under clause 534 of the Mental Health Bill 2013 and they should be constrained in a legislative format. I am sure that the parliamentary secretary's advisers will have nightmares about this bill for a number of years; it is 397 pages, with 583 clauses and a couple of schedules at the back. The government sees this bill as very important to providing a comprehensive legislative framework for mental health. When we bring up issues about the need to have legislative constraints or legislative recognition, the parliamentary secretary seems to say, "You can rest assured; everything will be okay. There will be an agreement et cetera." However, nothing in clause 534 seems to legislatively constrain the delegation by the Chief Psychiatrist. For instance, some Chief Psychiatrists will be better than others and some will work harder than others. Therefore, a lazy Chief Psychiatrist may delegate much, much more to the extent that the standard of treatment and care that a patient receives is of a level that we as a community should not accept.

Ms A.R. MITCHELL: Certainly, we appreciate that the member understands that the Chief Psychiatrist will need to make some delegations, and we thank him for that. I can assure the member that if a Chief Psychiatrist, certainly under this government's watch, was not performing the role of Chief Psychiatrist but continually delegating, that would be attended to very quickly because that person is in a role for a particular purpose and he has responsibilities and functions.

Ms S.F. McGURK: I wonder whether the parliamentary secretary could be a bit more specific about her objection to the amendment. If I understand the amendment correctly, proposed subsection (1) would make clear the parameters of the delegation and that the named psychiatrist would meet the definition of a psychiatrist in proposed subsection (1A)(a), thereby ensuring some independence for delegations to occur. Perhaps the parliamentary secretary could explain in a little more detail her objections to that amendment, because I can only see that it would spell out a lot more clearly the parameters under which the Chief Psychiatrist would delegate and who they would delegate to, and ensure some integrity of the office of Chief Psychiatrist and the psychiatrists delegated to.

Ms A.R. MITCHELL: A significant part of the amendment is about how the named psychiatrist cannot be a staff member of, or involved in, the management of a mental health service. The overwhelming majority of psychiatrists are employed in mental health services. The proposed amendment would limit the possible delegates to the very limited number of private or academic psychiatrists and who may not be sufficiently versed in this legislation. I am very much opposed to that part of the amendment. Also, limiting delegations to named psychiatrists would require the constant revision of delegations in response to personnel changes and leave arrangements. I repeat that under the Interpretation Act 1984, delegations may be made to a specified person or persons of a specific class, or to the holder or holders for the time being of a specified office or class of office.

Division

Amendment put and a division taken, the Deputy Speaker (Ms W.M. Duncan) casting her vote with the noes, with the following result —

Ayes (12)

Dr A.D. Buti	Mr W.J. Johnston	Mr M. McGowan	Mr P.C. Tinley
Mr R.H. Cook	Mr D.J. Kelly	Ms S.F. McGurk	Mr B.S. Wyatt
Ms J.M. Freeman	Mr F.M. Logan	Mr P. Papalia	Mr D.A. Templeman *(Teller)*

Noes (27)

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

Pairs

Mr J.R. Quigley	Mr A.J. Simpson
Ms J. Farrer	Mr T.R. Buswell
Mrs M.H. Roberts	Mr C.J. Barnett
Mr M.P. Murray	Mr R.S. Love
Ms L.L. Baker	Mr M.J. Cowper
Mr C.J. Tallentire	Mr J.E. McGrath
Mr P.B. Watson	Mr F.A. Alban
Ms R. Saffioti	Dr K.D. Hames

Amendment thus negatived.

Dr A.D. BUTI — by leave: I move —

Page 354, line 17 — To delete "Psychiatrist." and substitute —

Psychiatrist and must be published in the *Gazette*.

Page 354, after line 19 — To insert —

(3A) A person to whom a power or duty is delegated under this section must exercise or perform that power or duty in accordance with the standards published under section 543(2)(f) for that purpose.

Page 354, line 22 — To insert after "with" —

the standards referred to in subsection (3A) and

I have moved these amendments for the same purpose that I moved the other amendment, which I should have moved en bloc with these amendments. I am trying to ensure that delegation is done in an appropriate manner and is properly vetted and scrutinised.

Ms A.R. MITCHELL: I will try to put all the bits together for the member. Firstly, the process of publishing delegations in the *Government Gazette* would not be sufficiently responsive to allow delegations to take effect when they need to. The timing factor is very important. Delays associated with the gazettal process could have negative consequences for the treatment and care of patients. The bill already requires that delegations be in writing and signed by the Chief Psychiatrist. The position at present is that the Office of the Chief Psychiatrist makes available the instruments of delegation pertaining to duties and powers. It is intended that this policy continue to apply under the new legislation. The Office of the Chief Psychiatrist may also provide a list of delegated roles.

On the other amendments, like the Chief Psychiatrist, a delegate will be required to exercise powers and duties in accordance with the legislation and having regard to the objects of the bill. The Chief Psychiatrist is able to specify conditions and limitations in relation to each delegation. As is the case under the 1996 act, the Chief Psychiatrist will delegate only to senior psychiatrists and will provide comprehensive information regarding the role. It is therefore not necessary for standards to be published in relation to delegations in general.

Amendments put and negatived.

Clause put and passed.

Clause 535: Mental health practitioners —

Dr A.D. BUTI: Of course I understand that a psychologist would have some expertise and knowledge of mental illness, as would a nurse possibly. I know that we are dealing with mental health practitioners, and earlier we talked about what they are there for, but what particular qualifications, experience or university education will occupational therapists and social workers have to deal with mentally ill patients?

Ms A.R. MITCHELL: Occupational therapists and social workers have tertiary degrees and they will have done core work in that area. They may have chosen to do an elective, which is probably not the right word now. The important thing to remember with those two groups of people is that people work in teams in a mental health service; it is not just one person working on their own. There is a team approach in working together for the patient; it is not just one person going off and doing their own thing.

Dr A.D. BUTI: Earlier in the bill, it outlines what mental health practitioners can do and what occupational therapists and social workers can do. They have reasonably substantial powers. They will not always work in a team, especially if they are in a remote community. What core subjects do they do at university that give them the qualifications or expertise to deal with mentally ill patients?

Ms A.R. MITCHELL: An example of a unit that a social worker would undertake is a mental health and recovery unit. I emphasise that, in addition to their course work—I am sorry; I do not have a list of academic qualification course work in front of me—they will have at least three years' experience in the management of people who have a mental illness. That is also part of it. The member mentioned people working in remote areas. Nowadays, people who work in a remote area will still certainly work in a team environment with other people to make sure that they provide the best service, treatment and outcomes for patients. They may not be physically together, but they work in a team.

Dr A.D. BUTI: I have a real concern that an occupational therapist or a social worker in a remote area may be on the phone to a psychiatrist in the city to try to obtain information on how best to deal with the referral or treatment of someone, so I wonder whether occupational therapists and social workers have been included in the bill because it will help dilute the necessity for the government to put extra resources into mental health.

I know a number of people who work in mental health, and they are incredibly stretched. We all know about the shortage of resources at the Bentley adolescent mental health unit. If we ask a member of the general public what they do and they say they are an occupational therapist or a social worker, it will automatically click that they have enough tertiary experience to deal with people with a mental illness. This is a cop-out because the government does not want to put further resources into mental health; it is hoping that other areas of the health system will take up the slack. I am still waiting to find out what compulsory university courses occupational therapists and social workers have to do that will give them the necessary experience. The clause states that a mental health practitioner has at least three years' experience in the management of people who have a mental illness. What sort of experience do they have?

Ms A.R. MITCHELL: To clarify that for the member, a mental health practitioner can place a person on referral only if they are authorised. It is only an authorised mental health practitioner who can make a person an involuntary patient; a general mental health practitioner is not able to do that.

Dr A.D. Buti interjected.

Ms A.R. MITCHELL: That person has to be authorised by the Chief Psychiatrist. It is quite significant. People are not working in isolation.

Dr A.D. Buti: As the member for Fremantle said, "or who the Chief Psychiatrist delegates to".

Ms A.R. MITCHELL: We are talking about the types of people listed in clauses 535 and 536. These people have to be authorised by the Chief Psychiatrist. These people are assessed very thoroughly, and training is involved as well. I suspect that that training is constant and continual, not something that is just done at university and then finished.

Ms S.F. McGURK: I refer to the people who, under clause 535, have experience in the management of people who have a mental illness. The clause does not say under what circumstances or in what environment. For instance, could it be the case that an occupational therapist, social worker or nurse works in an alternative therapy arrangement that is not regulated and does not have the same rigour as mainstream mental health services?

Ms A.R. Mitchell: I will respond to that by saying that that person has to be authorised by the Chief Psychiatrist. Under the circumstances the member just raised, that person would probably not get that authorisation.

Ms S.F. McGURK: The clause states that the practitioner is someone who has "3 years' experience in the management of people who have a mental illness". It does not say that they need to have experience in a public health facility.

Ms A.R. Mitchell: It comes under clause 536, which relates to authorised mental health practitioners.

Ms S.F. McGURK: It may come under clause 536 but clause 535 refers to practitioners only needing experience in the management of people with a mental illness. I am concerned that it does not say under what environment and whether it is in a proper credentialed environment, either in a private or public health environment that is properly regulated. Different practices occur throughout the health system that are not regulated. We have a responsibility under this bill to the people being cared for in Western Australia who have a mental illness and who may be vulnerable and to people who may be working outside the mainstream, whether it be private or public. I am not sure that the way this clause is constructed gives us much comfort on the issues that we have raised.

Ms A.R. MITCHELL: The professions that are listed in that clause—psychologist, social worker, occupational therapist and nurse—are all defined terms in clause 4. Therefore, they must meet the requirements that apply in clause 4.

Clause put and passed.

Clause 536 put and passed.

New clause 536A —

Dr A.D. BUTI: I do not wish to move my amendment on the notice paper. I wish to move a new amendment, which I have in front of me, which I believe the parliamentary secretary has seen. It relates to the register of authorised mental health practitioners and what that register should include. It refers to persons designated under section 536 as authorised medical health practitioners. It is a very sensible amendment. I believe it has the agreement of the parliamentary secretary. I move —

Page 356, after line 10 — To insert —

536A. Register of authorised mental health practitioners

(1) The Chief Psychiatrist must keep a register of persons who are, or have been, designated under section 536 as authorised mental health practitioners.

(2) The register must be kept in the manner and form determined by the Chief Psychiatrist.

(3) The register must include the following particulars of each person registered under subsection (1) —

(a) the person's name;

(b) the date on which the order designating the person as an authorised mental health practitioner was published in the *Gazette*;

(c) any limits within which, or any conditions subject to which, the person can perform the functions of an authorised mental health practitioner that were specified in the order referred to in paragraph (b);

(d) the date on which any order amending the order referred to in paragraph (b) was published in the *Gazette* and details of the amendments;

(e) the date on which any order revoking the order referred to in paragraph (b) was published in the *Gazette*.

(4) The Chief Psychiatrist must ensure that the register is available free of charge for inspection by members of the public —

(a) from the office of the Chief Psychiatrist during the business hours of that office; and

(b) on the Agency's website.

The DEPUTY SPEAKER (Ms W.M. Duncan): Just for clarification, the change that the member for Armadale is referring to from the amendment on the notice paper is at (4)(a). The words "at the" are replaced by the words "from the".

Dr A.D. BUTI: The reason for this new clause is logistic; that is, it is important that the Chief Psychiatrist not be swamped with a lot of people at the office. I thank the Chief Psychiatrist, along with the parliamentary secretary, for agreeing to the amendment.

New clause put and passed.

Clauses 537 to 542 put and passed.

Clause 543: Publication of guidelines and standards —

Dr A.D. BUTI: This clause comes under division 7, "Guidelines and standards". It states —

> (1) The Chief Psychiatrist must publish guidelines for each of these purposes —

There are a number of purposes, including the performance of electroconvulsive therapy. The standards that the Chief Psychiatrist requires are set out in clause 543(2), which states —

> (2) The Chief Psychiatrist must publish standards for the treatment and care to be provided by mental health services to the persons specified in section 512(1).

The amendment I will move shortly seeks to ensure that in setting the standards, the Chief Psychiatrist should have regard to the standards that were reported in the Stokes report and the national mental health standards. Rather than specify these in the act as a list of documents to which the Chief Psychiatrist must have regard, I seek with this amendment to provide for a list to be prescribed by regulation—therefore, it can be updated more easily as standards. It is important that there be a publication of guidelines and a publication of standards. It is only through the publication of standards that we can appropriately scrutinise them. The standards must be abided to by the Chief Psychiatrist down the hierarchical structure. I have sought to state that rather than prescribe the standards as a list in the bill, they be prescribed by regulation, which can more easily be updated. I move —

> Page 359, lines 13 to 15 — To delete the lines and substitute —
>
> (2) The Chief Psychiatrist must publish standards for each of these purposes —
>
> (a) the treatment and care to be provided by mental health services to the persons specified in section 512(1);
>
> (b) the exercise of apprehension powers under Part 11 Division 1;
>
> (c) the exercise of search and seizure powers under Part 11 Division 2;
>
> (d) the transport of persons under transport orders;
>
> (e) the installation, maintenance and use of closed circuit television to monitor the treatment, care and management by staff members of mental health services of patients who are admitted by, and persons who are detained under this Act at, those mental health services;
>
> (f) the exercise or performance by a person of a power or duty of the Chief Psychiatrist that is delegated to the person under section 534.
>
> (2A) In preparing standards for publication under subsection (2)(a) to (d), the Chief Psychiatrist must have regard to —
>
> (a) any standard or other document prescribed by the regulations for that purpose; and
>
> (b) the needs of persons who are of Aboriginal or Torres Strait Islander descent; and
>
> (c) the needs of persons from culturally and linguistically diverse backgrounds.
>
> (2B) For subsection (2A)(a), the regulations may prescribe a standard or other document as in force at a particular time or as in force from time to time.

> (2C) Without limiting the duty under subsection (2) to publish standards from time to time as occasion requires, the Chief Psychiatrist must publish standards under subsection (2)(a) to (d) within 12 months after the day on which Part 28 comes into operation.

Proposed subclause (2C) of my amendment states —

> Without limiting the duty under subsection (2) to publish standards from time to time as occasion requires, the Chief Psychiatrist must publish standards under subsection 2(a) to (d) within 12 months after the day on which Part 28 comes into operation.

The words "without limiting the duty under subsection (2) to publish standards from time to time as the occasion requires" mirror the Interpretation Act 1984, section 48. In this case, it will apply to subsection 2(c), which provides an obligation on the Chief Psychiatrist to publish standards from time to time as the occasion requires. It is a standard procedure that is used in other legislative instruments.

Ms A.R. MITCHELL: I will go through specifically the issues that the member for Armadale has raised. I ask that he bear with me as I go through them. After consideration of the amendment, we do not believe it is necessary; therefore, I will not support it—mainly because the matters referred to in his amendment are already addressed in the bill. I provide some examples. Proposed clause (2)(a) is already included in the existing subclause (2). Proposed paragraphs (b), (c) and (d) relate to matters already addressed in other parts of the bill, which are highly prescriptive. More detailed guidance will be included in the guidelines for ensuring compliance with this act by mental health services required under clause 543(1)(h). Proposed paragraph (e) of the member's amendment relates to the use of CCTV in mental health service facilities. The Chief Psychiatrist's existing standards for the authorisation of hospitals refer to the use of CCTV in public corridors and other areas external to the ward. Obviously, these standards will be revised or published during the implementation period. I am just checking to see whether it was "public corridors" because we believe people also need privacy.

Proposed paragraph (f) has already been discussed in the context of the proposed amendment to clause 534. In relation to proposed subclause (2A), standards will be prepared in collaboration with a range of stakeholders, including representatives from the Aboriginal and Torres Strait Islander people and people from culturally and linguistically diverse backgrounds.

Dr A.D. Buti: Is that in the legislation?

Ms A.R. MITCHELL: No.

Dr A.D. Buti: That is the whole point.

Ms A.R. MITCHELL: They will be part of this whole process.

Dr A.D. Buti: It is the whole point of the amendment.

Ms A.R. MITCHELL: They will be part of this whole process, and it is certainly not our intention to suddenly say, "Thank you, but we don't need you anymore."

Dr A.D. Buti: How do we know?

Ms A.R. MITCHELL: Preparation of the bill has been assisted by, as I said, this cultural and clinical reference group, and we expect that to continue through the implementation period. The mental health implementation reference group will be advised by a group of community representatives from a range of cultural backgrounds. The specific needs of these diverse groups are currently addressed in the national standards for mental health services, which are expected to inform the standards developed in relation to the bill. Proposed subclause (2B) appears to have a similar effect to clause 544, and standards will be prepared during the implementation period and will be reviewed and revised regularly.

Dr A.D. BUTI: Once again, we have a response of, "This will happen", "It is an assurance" or "It might be a policy." A lot of what the parliamentary secretary said in that response deals with a promise and a wish. We seek with our amendment to give legislative guarantees that X, Y and Z happens. Just as an aside, though, I do agree with the privacy issue regarding CCTVs. There also is an issue about it being lawful under the Surveillance Devices Act. We believe it will be. Again, this bill is probably the largest bill that will come before the house this year. Often when we seek to provide better legislation or an improvement, the parliamentary secretary's response is, "This will happen because there's an agreement", or "It just will happen." That is not sufficient when dealing with such an important issue. This government has taken years to bring this bill before the house given the extensive consultation with stakeholders et cetera. After our close scrutiny of the bill, we seek to improve the bill by ensuring that things are not left to the goodwill of X, Y, Z, but are given legislative force, which then provides a greater degree of assurance to patients, their families, their carers and the general community.

Division

Amendment put and a division taken, the Deputy Speaker (Ms W.M. Duncan) casting her vote with the noes, with the following result —

Ayes (12)

Dr A.D. Buti	Mr W.J. Johnston	Mr M. McGowan	Mr P.C. Tinley
Mr R.H. Cook	Mr D.J. Kelly	Ms S.F. McGurk	Mr B.S. Wyatt
Ms J.M. Freeman	Mr F.M. Logan	Mr P. Papalia	Mr D.A. Templeman *(Teller)*

Noes (27)

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

Pairs

Ms J. Farrer	Mr T.R. Buswell
Mrs M.H. Roberts	Mr C.J. Barnett
Mr J.R. Quigley	Mr A.J. Simpson
Mr M.P. Murray	Mr R.S. Love
Mr C.J. Tallentire	Mr J.E. McGrath
Ms L.L. Baker	Mr M.J. Cowper
Mr P.B. Watson	Mr F.A. Alban
Ms R. Saffioti	Dr K.D. Hames

Amendment thus negatived.

Clause put and passed.

Clauses 544 to 578 put and passed.

New clause 578A: Compensation for unlawful detention —

Dr A.D. BUTI: I move —

Page 384, after line 15 — To insert —

578A. Compensation for unlawful detention

(1) This section applies if a person is detained contrary to this Act.

(2) The minimum amount of damages that the person is entitled to be awarded for the unlawful detention referred to in subsection (1) is $1 000 for each day or part of a day that the person is unlawfully detained.

(3) A court cannot award the person damages contrary to subsection (2).

It is important at times to ensure that there are compensatory avenues for people who have been wronged. This legislation provides penalties for the wrongdoer. Nowhere in this bill is there a compensation clause in respect to the victim who may have been wronged by action implemented under the jurisdiction of this bill. If someone is unlawfully detained, it is a serious restriction on their freedoms. The object of the legislation, as stated in clause 10, is to minimise the interference upon liberties and rights. It would seem appropriate that people with a mental illness who have been unlawfully detained should be compensated because it can assist if any rehabilitation is necessary or as part of reconciling the person who has been wronged with the state. Ultimately it is the state that has done the wrong in this case. The compensation is the quite modest amount of $1 000 for each day that the person is unlawfully detained, and as stated in new subclause (3), a court cannot award a person damages contrary to subclause (2).

Ms A.R. MITCHELL: I understand what the member is trying to achieve with this new clause, but we do not think it is necessary because an aggrieved person already has an avenue of recourse via common law and/or the Criminal Code.

Dr A.D. BUTI: The common law? So a person has to instigate legal action in a court system that may cost a lot of money and they may not actually have that money and they may not get legal aid. The government is asking people, who often may not have the economic means to engage a lawyer, to follow up a grievance through the common law route, which could take years. We have a workers' compensation act to allow people to be awarded compensation according to a schedule if they are injured and there is also the possibility for them to take common law action. We have a number of acts that award compensation to people who have been wronged or

injured and I think the government's response is quite disrespectful to people who may have suffered from a mental illness in the past. Often, people who have been unlawfully detained will have a mental illness or a history of it; they are the most vulnerable and at-risk people. As we very well know, many people with a mental illness do not have the economic capacity to engage a lawyer and many of these people are homeless, but the parliamentary secretary's response is that this new clause is not necessary because those people can take the common law route. That is just absurd when all this new clause seeks to do is to provide compensation for unlawful detention, which I would think would give more substance to clause 10. I keep referring back to this clause and I think I will quote it again. Clause 10 on page 15 of the bill states —

> (1) The objects of this Act are as follows —
>
> (a) to ensure people who have a mental illness are provided the best possible treatment and care —
>
> (i) with the least possible restriction of their freedom; and
>
> (ii) with the least possible interference with their rights; and
>
> (iii) with respect for their dignity;

I would say that the government is showing no respect for dignity when its response to the proposed insertion of a new clause that seeks to award a modest form of compensation for unlawful detention is that people affected can take the common law route. It is basically like asking people to go to court to sue for defamation. As we know, defamation is a rich person's sport. A person generally has to be quite well off to sue for defamation. There is the same inequality here in telling a person with a mental illness, who may be homeless, to take the common law route. It is absolutely absurd. This new clause seeks to provide a modest form of compensation for people who have been unlawfully detained. They have not committed a crime so they should not be treated in the same light as people who have committed crimes. They have been unlawfully detained probably because they have in the past had a mental illness and the parliamentary secretary says they should take the common law route through the court system. That is absolutely absurd. Ninety-nine per cent of these people will probably be unlikely to have the economic means to take that route, and if they have a mental illness the stress involved in taking court action could make their mental condition even worse. It is quite ironic that the government has done its best throughout this bill to reduce the ability of lawyers to be involved in the system, but its response here is for people to hire a lawyer and go through the court system. It is absolutely absurd and, I say, incredibly disrespectful to people for whom the government says it is trying to ensure proper treatment and care under this bill.

Ms A.R. MITCHELL: There is no equivalent provision in any other Australian jurisdiction and that is because criminal and civil courses of action are available.

Dr A.D. Buti: In what way?

Ms A.R. MITCHELL: Can I just finish?

It is also unclear how the member's proposed new clause would work. Basically a person is going to have to go to court anyway to determine what unlawful detention is, damages and things like that. As I said, we do not believe this new clause is necessary.

Dr A.D. BUTI: When I have referred to other jurisdictions in which the president is a lawyer, the parliamentary secretary did not feel it necessary to consider other jurisdictions, but now because the parliamentary secretary thinks the other jurisdictions help her argument, we should refer to the other jurisdictions. Can we be a little consistent here, and can the parliamentary secretary please explain what other actions or alternatives are available if we do not provide this?

Ms A.R. MITCHELL: I have said through tort and criminal law.

Ms S.F. McGURK: I would also like to support the member for Armadale's amendment. It seems to me that at the very least the Mental Health Bill 2013 could provide for specific damages to apply to someone who has been unlawfully detained under this legislation. As the member for Armadale has very clearly spelt out, the amendment is reasonable. It would be cost-prohibitive, stressful for someone with a mental illness, and simply out of the reach of most people who will be covered by this bill to send them down the mainstream route—common law and the like—to try to seek some sort of compensation because, or recognition that, they were unlawfully detained. I think this amendment is simple and will provide proper and meaningful but modest recognition that the people who may have been unlawfully detained should be compensated for being wronged under this legislation.

Mr W.J. JOHNSTON: I wanted to point out, parliamentary secretary, that for the provision the member for Armadale is talking about to apply, there would already have to be some action in another process; we are not

asking for the action to be solely on this matter. It is common in industrial law for there to be specialist tribunals—a workers' compensation tribunal, an industrial tribunal—for the very purpose of having things done in a no-cost environment and without the need to have matters litigated in front of the common law courts. That long history of procedures has been built up over 100 years, recognising the frailty of the human being. The member for Armadale's suggestion does exactly that—recognises the frailty of human beings. To say that we will just have the common law courts deal with it would appear on the surface to be very inadequate. There will be a higher level of capacity to deal with workers' compensation matters than there will be for people being unlawfully detained. It does seem a bit strange not to have an alternative procedure for such people. I think the way the member for Armadale explained it in his first comments was very clear, and perhaps if he wants to explain again, that might be helpful to the parliamentary secretary.

Dr A.D. BUTI: The parliamentary secretary mentioned that criminal compensation is available, but that is not necessarily so because the unlawful detention may not amount to a crime. If it does not amount to a crime, it will not come under the criminal injuries compensation scheme, for a start; then there is the tort. The difference here, as the parliamentary secretary would know very well, is that the parts required to have a successful action in tort can be incredibly complex. There could be an intentional tort, which could be complex to argue and would require a longer period in the court system, which is incredibly economically prohibitive to most of the people this will apply to. We cannot say that they can rely on tort or, I presume, the criminal injuries compensation scheme, because both may not actually operate or both have major negatives to them in respect of the people who are most likely to need an amendment such as this to apply to them.

Ms A.R. MITCHELL: Member, when I referred to the Criminal Code—I am sure the member probably knows it better than I—section 336 is actually about procuring the apprehension or detention of persons not suffering from mental illness or impairment. Section 337 deals with the unlawful detention or custody of persons who are mentally ill or impaired. Those sections include a summary of conviction penalties as well.

Dr A.D. BUTI: How will the magnitude of the compensation be determined?

Ms A.R. Mitchell: I think the member for Armadale knows the answer.

Dr A.D. BUTI: No; I am asking the parliamentary secretary how we would determine the compensation magnitude.

Ms A.R. MITCHELL: I believe the person who determines that is the Chief Assessor of Criminal Injuries Compensation.

Dr A.D. BUTI: But how much does the parliamentary secretary think that would be? By not agreeing to this amendment, is the parliamentary secretary imposing a greater potential liability on the state than my amendment would? Is the parliamentary secretary not going to answer such an important question?

Mr W.J. JOHNSTON: I am interested in the parliamentary secretary's answer to the question. I think what the member for Armadale points out is that if we proceed in the way the parliamentary secretary is asking us to, the actual potential liability of the state will increase. I wonder whether the parliamentary secretary has understood the question. If the commentary of the member for Armadale is correct, it is probably worth the parliamentary secretary getting the response on the record.

Division

Amendment put and a division taken, the Deputy Speaker (Ms W.M. Duncan) casting her vote with the noes, with the following result —

Ayes (12)

Dr A.D. Buti	Mr W.J. Johnston	Mr M. McGowan	Mr P.C. Tinley
Mr R.H. Cook	Mr D.J. Kelly	Ms S.F. McGurk	Mr B.S. Wyatt
Ms J.M. Freeman	Mr F.M. Logan	Mr P. Papalia	Mr D.A. Templeman *(Teller)*

Noes (27)

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

Pairs

Ms J. Farrer	Mr T.R. Buswell
Mrs M.H. Roberts	Mr C.J. Barnett
Mr J.R. Quigley	Mr A.J. Simpson
Mr M.P. Murray	Mr R.S. Love
Mr C.J. Tallentire	Mr J.E. McGrath
Ms L.L. Baker	Mr M.J. Cowper
Mr P.B. Watson	Mr F.A. Alban
Ms R. Saffioti	Dr K.D. Hames

Amendment thus negatived.

Clause 579 put and passed.

Clause 580: Protection from liability when detaining person with mental illness —

Dr A.D. BUTI: I rise to oppose the clause; I think I can leave it at that.

Clause put and passed.

Clauses 581 to 583 put and passed.

Schedules 1 and 2 put and passed.

Title put and passed.

Reconsideration in Detail — Motion

On motion by **Ms A.R. Mitchell (Parliamentary Secretary)**, resolved —

That the bill be reconsidered in detail for the further consideration of clauses 350 and 353.

Reconsideration in Detail

Clause 350: Functions of Chief Mental Health Advocate —

Dr A.D. BUTI: I move —

Page 252, lines 17 and 18 — To delete ", the CEO under section 353(2)".

Amendment put and passed.

Clause, as amended, put and passed.

Clause 353: Directions to Chief Mental Health Advocate about general matters —

Dr A.D. BUTI: I move —

Page 255, lines 9 and 10 — To delete "or the CEO to issue a direction under subsection (2)".

Amendment put and passed.

Clause, as amended, put and passed.